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ZIONISM AND ARAB RESISTANCE

PALESTINE RESEARCH CENTER

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PREFACE

On the occasion of the «Human Rights Regional Conference» held in Beirut on the 2nd of December, 1968, it seems appropriate and necessary to evaluate the condition of the Arabs living in the occupied territories with respect to basic human rights. «The declaration of Human Rights» calls for the recognition of certain basic rights to all peoples, even those living under foreign occupation. Yet, the Arabs living in occupied Palestine hardly enjoy any of these rights stipulated by the U.N. When people living under occupation are denied the minimum of protection recognized universally, nothing is left to them but to resist the occupant with their own means. In doing so, they would not be contradicting international laws. Rather, they would be using rights alloted to them by the U.N. through the Geneva Convention and the Hague Conventions.

These three studies were presented at the «Human Rights Regional Conference» (1968), in an effort to prove the legality of armed resistance.

ZIONISM AND ARAB HUMAN RIGHTS

By Dr. ASS'AD RAZZOUK

INTRODUCTION

The Zionist idea implies a specific attitude to the basic human rights of Palestine Arabs. Zionism, as a world Jewish movement, derives its predominant conception of Jewish nationalism from a number of 19th Century European ideas and trends of thought and action. Its main objective, proclaimed in the Basel Programme of 1897, was identified with the following: «Zionism strives to create for the Jewish people a home in Palestine secured by public law». The Zionist movement, both in theory and practice, has always betrayed an inherent disposition towards ignoring the rights of Palestinian Arabs; and it was launched officially with the assumption that Jewish agricultural and industrial colonization of Palestine constituted a suitable means for the attainment of its ends.

This essay on the Zionist view of Arab rights is both a study and a general survey of the Zionist attitude towards the indigenous Arab population of Palestine. Nothing is certainly more fitting for its writing than the coming celebration, on a world-wide scale, of the 20th Anniversary of the **Universal Declaration of Human Rights** — adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948. Looking back to the year 1948 one cannot help being constantly reminded that the state of Israel has been procaimed in that same year (May 14, 1948) on a territory inhabited by a great

majority of Palestinian Arabs, and within boundaries («armistice lines») that exceed by far the area alloted to the Jewish State in the U.N. Partition Plan of November 1947.

The preamble of the text proclaiming the «Independent state of Israel» reviews the history of Zionism in its efforts to colonize Palestine in the following manner:

«In the year 1897, the first Zionist Congress, inspired by Theodor Herzl's vision of the Jewish State, proclaimed the **right** of the Jewish people to national revival in their own country. This **right** was acknowledged by the Balfour Declaration of November 2nd, 1917, and reaffirmed by the Mandate of the League of Nations, which gave explicit international recognition to the historic connection of the Jewish people with Palestine and their right to reconstitute their national home»[1].

Then it goes on to say:

«On November 29th, 1947, the General Assembly of the United Nations adopted a resolution for the establishment of an independent Jewish State in Palestine, and called upon the inhabitants of the country to take such steps as may be necessary on their part to put the plan into effect. This **recognition** by the

(1) See «Text of Proclamation»: Independent State of Israel, in *The New Judaea*, Vol. XXIV. No. 8, May 1948.

United Nations of the **right** of the Jewish people to establish their independent state may not be revoked. It is, moreover, the **self-evident right** of the Jewish people to be a nation as all other nations in its own sovereign state». **(Ibid.).**

But this Zionist declaration of «Jewish rights» carefully avoids any mention of the rights pertaining to the Arab majority among the inhabitants of Palestine, although such a majority has existed all throughout the 50 years between the convening of the First Zionist Congress in Basel (Switzerland) and the establishment of the State of Israel in 1948. The Zionist colonists in Palestine are depicted in this typical manner; «They sought peace, yet were ever prepared to defend themselves. They brought the blessings of progress to **all** inhabitants of the country». **(Ibid.).**

In view of all this «pre-conceived omission», it becomes incumbent upon us to look at Zionism in retrospect, and examine the attitude(s) of the Zionist movement towards Palestine and the rights of its indigenous Arab population. Bearing in mind that the state of Israel is a creation indebted to the efforts of International Zionism, as much as it is indebted to the various deep-rooted interests and ambitions of other Big Powers in their imperialist hegemony and strategic control of the world.

PART ONE

Searching for International Recognition: From Herzl to Balfour, 1897-1917

The first two decades in the history of the world Zionist movement begin with the establishment of the Zionist Organization, the formulation of the Basel Programme and Zionist efforts towards obtaining a **charter** for the colonization of Palestine. They end up with the Balfour Declaration on the 2nd of November, 1917. In that Declaration, as it is well-known, the British Government stated its «sympathy with Jewish Zionist aspirations» and conveyed the following «pledge» — namely: To «view with favour the establishment in Palestine of a National Home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object». Commenting on the Balfour Declaration shortly after the creation of Israel, Arthur Koestler was to write the following in his **Promise and Fulfilment, Palestine: 1917-1949:**

«The appearance of the freak-movement of Zionism on the political scene was bound to produce a series of freak-reactions. **It culminated in the famous Balfour Declaration, one of the most improbable political documents of all time. In this document one nation solemnly promised to a second nation the coun-**

try of a third»[2]. (Underlined by this author).

It is only appropriate that some space should be devoted to the ideas put forward by the founder of this «freak-movement» which appeared on the political scene towards the end of the last century. For Theodor Herzl has left his imprint on the movement he founded and officially launched. Moreover, Herzl himself is a child of his European environment; breathing the cultural atmosphere of German ideas and policies during the last three decades of the 19th Century, and coming to maturity with the upsurge of German imperialist ambitions drawing their inspiration from a discriminatory conception of German nationalism based on myths of racial purity and superiority.

Let us, therefore, pose the question about the nature of Herzl's Zionism and its content, in order to proceed from that towards the attitude of Herzlian Zionism to the problem of Arab rights.

A. Herzlian Zionism

1. «Benevolent» Anti-Semitism

A basic tenet of Herzlian Zionism is the view adopted by the author of **The Jewish State** (1896)

(2) Arthur Kœstler — *Promise and Fulfilment*, Palestine: 1917-1949, (London, 1949), see chapter one. «Romantics and Routine», p. 4.

towards the phenomenon of anti-semitism. Herzl does not consider anti-semitism as an evil that **could** and **should** be eradicated. But rather «a movement useful to the Jewish character», as he confesses in his **Diaries.** His starting-point is therefore a major conviction in which he recognizes «above all (...) the emptiness and futility of efforts to combat anti-semitism»[3]. The world becomes divided into two camps: The Jews, on the one hand, and the nations (Gentiles) on the other. Jews are conscious of their Jewishness because of antisemitism, or, as Herzl and Max Nordau come to agree in 1895: «Only anti-semitism had made Jews of us»[4]. Apart from the Jews, the rest of the world comprises two categories of nation «in whose midst Jews live»: these nations are «either **overt** or **covert** anti-semites»[5]. The Herzlian definition of a Jewish nation is only possible in terms of the **common enemy** («The Anti-Semite») who enables a «historical group of men of a recognizable cohesion» to hold together. In other words, Jews constitute a nation because they face a common

(3) *The Complete Diaries of Teodor Herzl,* Vol. I, (published by the Theodor Herzl Foundation, Thomas Yoseloff, New York, 1960), p. 6. Hence forth referred to as *Diaries.*

(4) *Ibid.,* p. 196, Max Nordau's slogan was: «Jewry will be Zionistic, or it will not be».

(5) Theodor Herzl — *The Jewish State.* An Attempt at a Modern Solution of the Jewish Question, 4th ed. transl. by Sylvie D'Avigdor, London, 1946, p. 23.

enemy in the overt or covert anti-semitism professed by the rest of the world.

Herzl goes on to incorporate the benevolence of anti-semitism into his world-picture. Alluding to epidemics as part of God's design, he is able to draw this conclusion with respect to anti-semitism:

«Thus anti-semitism, too, probably contains the divine Will to Good, because it forces us to close ranks, unites us through pressure, and through our unity will make us free»(6).

As a matter of fact, Herzl borrows a great deal of images and concepts from the predominant heritage of social Darwinism, which is looked upon by intellectual historians of the 19th Century as «the chief conditioning philosophy of Europe in the 1870's»(7) and afterwards. He speaks of Zionism in terms propagated by the followers of Darwinism: pressure leads to counter-pressure, the misery of the Jews is the propelling force of Zionism, «a Darwinian mimicry will set in. The Jews will adapt themselves. They are like the seals, which an act of nature cast into the water». One could certainly detect a great deal more of this Darwinian imagery and universe of discourse in the writings of Herzl. However, we shall

(6) *Diaries, op. cit.*, p. 231.

(7) Carlton Hayes — *A Generation of Materialism:* 1871-1900, (The Rise of Modern Europe), Harper Torchbooks (3039), New York, 1963, p. 12.

have to emphasize those aspects relevant to the subject at hand.

2. Peace and Explosives

In accordance with his view that a common enemy constitutes the prerequisite for Jewish solidarity, Herzl proceeds to discredit all attempts hitherto undertaken to provide a solution for the anti-semitic malaise of the gentile nations. «Peace societies» are not wanted, because « a man who invents a terrible explosive does more for peace than a thousand gentle apostles»[8]. It makes no difference whether Jews stay where they are or choose to emigrate, there must be launched among them a process which he describes as «the self-fertilization of the nation», i.e. persuading big Jewish bankers, by means of Zionist marriage politics, «to give their daughters to up-and-coming vigorous young men».

Herzl's prognosis of his contemporary world and as it will probably remain so «for an indefinite period» cannot but come out with: «might precedes right» (**Jewish State**, p. 15). This being the case, improvement of the «Jewish race» becomes a first imperative in Zionism: «It must be made strong as for war...»[9]. In concluding his pamphlet on the «Jewish State», Herzl appeals to the «fair-minded

(8) *Diaries, op. cit.*, p. 6.

(9) *Ibid.*, p. 21.

reader» not to misunderstand «the spirit of my words» or show aversion to detectable defects. It is his conviction that he has only explained «obvious things», and met with a number of objections to his projected solution. Apart from a first class of objections containing such a remark as «the Jews are not the only people in the world who are in a condition of distress», Herzl tries to refute another «revealing» kind of objections in the following manner:

«It might further be said that we ought to create new distinctions between people; we ought not to raise fresh barriers, we should rather make the old disappear»(10).

But those who are prone to raise such far-fetched objections and indulge in such thoughts are nothing but «amiable visionaries». Their bones will have turned into dust blown away by the winds, before the **idea of a native land** could suffer any set back. Herzl has this single message to all «gentle apostles» of peace and brotherhood, lest they assume their «nightmares» to be beautiful dreams:

«Universal brotherhood is not even a beautiful dream.

Antagonism is essential to man's greatest effort»(11).

(10) *Jewish State, op. cit.*, p. 76.

(11) *Jewish State, op. cit.*, p. 76.

This Herzlian Declaration of Zionist principles and convictions is not at all different from the famous words uttered by the German General von Moltke in condemning the idea of permanent peace. Von Moltke is reputed to have declared:

«Permanent peace is a dream, and not even a beautiful one, but war is an essential element of God's scheme of the world».

It is against this background that Herzl's Zionism emerges in both works: The **Diaries** and the **Jewish State.** Nevertheless, the founder of political Zionism finds it rather convenient, and perhaps expedient, to depict his Zionism as «simply a peacemaker» (Der Friedensstifter), «... a moral, lawful, humanitarian movement, directed toward the long-yearned-for goal of our people»[12]. He even chooses to remind his Zionist audience that Zionism «suffers the usual fate of peacemakers, in being **forced** to fight more than anyone else».

Let us take a closer look at some of Herzl's ideas and opinions which went into the making of the Zionist legacy and constituted the guiding-lines for Zionist practice ever since.

(12) See Herzl's First Congress Address at Basel, August 29, 1897, in Arthur Hertzberg — *The Zionist Idea* (Harper Torchbooks 817, New York 1966), p. 229, 230.

3. Immediate Benefits

The benevolence of anti-semitism is matched only with that of Zionism, if not excelled by it. Herzl placed his Zionist undertaking in such a position as to issue tempting promises to all concerned with the realization of his schemes. The anti-semites are not the arch enemies of the Jews or their foes, but rather «will become **our most dependable friends**», the anti-semitic countries **our allies**»[13]. How does Herzl envisage such a sudden change of heart on the part of those nations accused of harbouring overt as well as covert anti-semitic feelings?

Addressing himself to the general European reader in the **Jewish State,** Herzl appeals to the imperial-mindedness of the masses towards the end of the last century by proclaiming the Zionist conquest of Palestine an extension of Europe's policy abroad: «We should there form a portion of the rampart of Europe against Asia, an outpost of civilisation as opposed to barbarism»[14]. In trying to win over the German Kaiser William II for sponsoring the Zionist plan of a German protectorate over Palestine, Herzl draws the attention of both the Kaiser and the Duke of Baden to those well-chosen advantages contained in such «samples»:

(13) *Diaries, op. cit.*, p. 84.

(14) *Jewish State, op. cit.*, p. 30.

(a) «We are bound to this sacred soil through no valid title of ownership. Many generations have come and gone since this earth was Jewish»[15].

(b) «... the Zionist movement of today (1898) is a fully modern one. It grows out of the situations and conditions of present-day life, and aims at solving the Jewish Question on the basis of the possibilities of our time».

(c) «German Jews cannot but welcome the movement. It will divert the influx of Jews from Eastern Europe away from them».

(d) «... with the Jews a **German** cultural element would come to the Orient. Evidence of this: German writers — even though of Jewish decent — are leading the Zionist movement. The language of the Congress is German. The overwhelming majority of the Jews are part of German culture».

(e) «Actually it is an element of German culture that would come to the Eastern shores of the Mediterranean with the Jews».

(f) «... the consequences that Zionism has had in Russia, where the Socialists and Anarchists are being converted to Zionism, because we have given them an ideal...».

(15) *Diaries,* Vol. II, *op. cit.*, p. 719.

(g) General advantages of the Jewish State of Europe: «We would build railroads into Asia — the highway of the civilized peoples. And this highway would then not be in the hands of any one Great Power».

(h) «If it is God's will that we return to our historic fatherland, we should like to do so as representatives of Western civilization, and bring **cleanliness, order,** and the well-distilled customs of the occident to this plague-ridden, blighted corner of the Orient».

(i) Advantages of Herzl's project accruing to the Orient:

1. «If Turkey were partitioned in the foreseeable future, an etat tampon (buffer state) could be created in Palestine».
2. We would restore to health the plague-spot of the Orient.
3. Let the Sultan give us that piece of land, and in return we shall:
   a. set his house in order;
   b. straighten out his finances;
   c. influence public opinion all over the world in his favor».

In other words, Herzl, is only too eager to highlight the mediate and immediate benefits which would

accrue to all those involved in his Zionist project. As he puts it in a letter to the Grand Duke of Baden, «a stream of happiness will flow from our project for many people, and not only for the Jews by any means»[16]. But the writings of Herzl do not really leave much to be desired as far as the Arabs of Palestine are concerned. What are the immediate benefits they should receive from this stream of universal happiness? How does Herzl view them and their basic human rights in planning the Zionist take-over of their Palestinian homeland?

4. A Zionist blueprint for the restless natives

It was Israel Zangwill who coined the Zionist phrase: «Let the people without a land be given a land without a people». But Herzl realizes too well that the coveted land of Palestine is not without a people. Hence, he sets for Zionism the task of occupying that land, promising all kinds of benefits to the «State that receives us». As to what will become of the Arabs who constitute the indigenous population of Palestine, Herzl has the following «obligations» to perform:

(a) «We must **expropriate gently** the private property on the estates assigned to us».

(b) «We shall try to spirit the penniless population across the border by procuring employ-

(16) See *Diaries,* Vol. I & II for the quoted passages.

ment for it in the transit countries, while denying it any employment **in our own country**».

(c) «If we move into a region where there are wild animals to which the Jews are not accustomed — big snakes, etc. — I shall use the **natives**, prior to giving them employment in the transit countries, for the extermination of these animals. High premiums for snake skins, etc., as well as their spawn».

Of course, it is a must for Herzl that both the process of expropriation and that of removing the poor natives should be carried out with the utmost care — «discreetly and circumspectly», as he puts it. He even speaks of a «voluntary expropriation» conducted by what he calls «our secret agents». Property owners who rejoice at the Zionist intrusion can go ahead in their naive belief «that they are cheating us, selling us things for more than they are worth». Herzl seems not to worry the least about such land speculations: «We are not going to sell them anything back»; «we shall then sell only to Jews, and all real estate will be traded only among Jews»[17].

When Herzl was questioned by the Grand Vizier what part of Palestine does he have in mind, his answer ran like this: «For more land, we shall make

(17) *Ibid.*, Vol. I, p. 88.

greater sacrifices». But a similar question addressed to him by the German Imperial Chancellor, Prince von Hohenlohe, in 1898, received the following outspoken answer:

«We will ask for what we need — the more immigrants, the more land»[18].

Then he went on to declare: «It will, **of course,** be purchased from its present owners in accordance with civil law». Nevertheless, he always found it opportune to remind others of Zionist bargaining power in this manner:

«Just consider that we are the sole purchasers of an article that is worthless to everyone else and unproductive — and purchasers at a stiff price»[19].

In addition to that, Herzl lays great emphasis in his writings on issues relevant to science, religion and democracy. His infatuation with scientism compels him to exclaim over and over again: «My solution is a strictly scientific one...» In other words, everything will be planned with the utmost care and calculation for the process of voluntary expropriation and its corollary of «spiriting the penniless population across the border». Founding the Jewish state cannot be done by reverting to «old stages of civilization» — as many Zionists would like to do, says

(18) *Diaries,* Vol. II, p. 701.

(19) *Ibid.,* Vol. I, p. 377.

Herzl. To illustrate his point he resorts to the following example:

«Supposing we were obliged to clear a country of wild beasts, we should not set about the task in the fashion of Europeans of the fifth century. We should not take spear and lance and go out single in pursuit of bears; we should organize a large and lively hunting party, drive the animals together, and throw a **melinite bomb** into their midst»[20].

As far as religion is concerned, Herzl stresses the point that he is not planning anything contrary to religion. Just the contrary; he expects to work very closely with **all** the **Rabbis.** Democracy becomes a «political nonesense», and its faults can never be exaggerated enough. It paves the way for **mediocrity,** insists on **publicity,** and enthrones «mere human beings» in power and government. It is the result of mob decisions «in the excitement of a revolution».

The aforementioned ideas and schemes of Herzl reveal to us the nature of his attitude to Arab rights in Palestine. They can only lead to such consequences as: depriving the indigenous population of Palestine of exercising their human rights, expropriating the private owners among them «gently and voluntarily», and exploiting their labour before launching the process of driving them out of their country and homes.

How did the newly-founded Zionist movement

(20) *Jewish, op. cit.,* p. 28-9.

bear the imprint of Herzl's ideas and aspirations? What were the influences of the movement known as «Gentile Zionism» on Herzl and the Zionist movement? Why did Herzl attempt a re-drawing of the picture to depict those «happy Arabs» in his novel **Altneuland (Old-New Land)?** Let us turn to these questions, trying to dwell upon each one of them separately.

5. Chartered Colonisation

In his First Congress Address Herzl outlined the Zionist course of action for attaining those ends of the movement contained in the Basel Programme. He laid emphasis on the fact that Zionism had to reach an «unequivocal understanding with the political units involved», if it were to reach its ends. By this he meant the following:

(a) To obtain **colonization rights** (in Palestine).

(b) To conduct negotiations with respect to the «settlement of Jewish masses on a large scale».

(c) To remind all would-be «Benefactors» of the advantages offered by the entire Jewish people in return.

(d) To postpone all lengthy discussions at the outset concerning the final legal form of the desired agreement.

However, Herzl found it convenient to proclaim that «one thing to be adhered to inviolably», namely — any agreement reached between the Zionist movement and the Ottoman Sultan to open Palestine for Jewish colonization on a very large scale «must be based on **rights,** and not on **toleration**»[21], or **sufferance.** (« Die Basis kann nur ein **Zustand des Rechtes** und **nicht der Duldung** sein»).

Almost a year ago Herzl has had a chance to sound Turkish officials on the Zionist wish to obtain Palestine «as a completely independent country». The Ottoman Government considered it «against our principles to sell any territory», and rejected the cession of Palestine — «under no circumstances». The Sultan himself let the following words be conveyed to Theodor Herzl in the summer of 1896:

«... advise (Mr. Herzl) not to take another step in this matter. I cannot sell even a foot of land, for it does not belong to me, but to my people. My people have won this empire by fighting for it with their blood and have fertilized it with their blood. We will again cover it with our blood before we allow it to be wrested away from us... The Turkish Empire belongs not to me, but to the Turkish people. I cannot give away any part of it. Let the Jews save their billions. When my Empire is partitioned, they may

(21) See Herzl — *Zionistische Schriften,* 2. Aufl. Berlin, 1920, p. 141.

get Palestine for nothing. But only our corpse will be divided. I will not agree to vivisection»[22].

The sultan did realize at that time what danger the Zionist scheme constitutes for both Turkey and the indigenous population of Palestine. For one thing, his immediate reaction was summarized in the following:

(a) «C'est une croisade déguisée contre la Turquie».

(b) «But Palestine is the craddle of other religions as well»[23].

Herzl and the Zionists, on the other hand, were not to be discouraged by this Ottoman refusal. As soon as the Zionist movement was officially launched, it became Herzl's political platform at the head of the World Zionist Organization to bring Jewish **infiltration** to a halt, so as not to help increase the value of land or raise its price. The watch-word of Herzlian diplomacy became: «To concentrate all energies on the acquisition of Palestine under International Law». In other words, the Zionist movement aimed at obtaining a charter for colonizing Palestine from the Turkish Government. It was Herzl's conjecture also that the coveted areas fall within the domains of a country where no «marked contrast»

(22) *Diaries*, Vol. I, p. 378.

(23) *Ibid.*, p. 289 and p. 394.

exists between «sovereignty and private property». Moreover, the Basel Programme spoke of a Home (Heimstatte) for the Jewish people, whereas it was understood in all Zionist circles that a **Jewish State** was meant by such a **circumlocation;** so as to avoid Turkish instigations, provocation and apprehensions. In 1920 Max Nordau admitted in a statement that the term «National Home» («Heimstatte») was chosen intentionally to mislead. It was «intended to deceive by its **mildness** and was in no sense an objuration of the Jewish claim to a Palestinian state». Nordau revealed this truth about Zionism in his statement:

«I did my best to persuade the claimants of the Jewish State in Palestine that we might find a **circumlocution** that would express all we meant, but would say it in a way so as to avoid provoking the Turkish Rulers of the coveted land. I suggested «Heimstatte» as a synonym for «State»... It was **equivocal,** but we all understood what it meant. To us it signified «Judenstaat» then and it signifies the same now... Now there is no reason to dissimulate our real aim». (Sykes — **Two Studies in Virtue,** p. 160).

It should however be noted that Nordau chose to reveal this trick almost three years after the Balfour Declaration was issued.

Herzl himself admits that the Jews are not bound to Palestine through a «valid title of ownership». Hence, Jewish colonization becomes the means for securing Palestine; and Jewish capital is to be recruited in the service of «redeeming» the coveted land. «Our salvation must be money» — as Herzl told the 2nd Zionist Congress.

In that 2nd Congress Herzl accentuated his Rejection of Infiltree Colonization and provided the movement with the new slogan of «conquering the Jewish communities» all over the world, so as to win Jewish sympathies for the Zionist solution. But the idea of obtaining the desired Charter remained a predominant item on the Zionist agenda. Herzl was never tired of pointing out the advantages resulting from «people's lack of understanding for my idea». In June 26, 1899 he told the Conference of the English Zionist Federation in London that:

«When a man who intends to build a house finds that he cannot purchase the land immediately, he may still proceed via a lease, or some similar agreement»[24].

This was no **revision** of the initial Zionist intentions and main objectives, but rather a shrewd version for saying: «We want to obtain a charter from

(24) Alex Bein — *Theodore Herzl.* A Biography, (Philadelphia, (1940), p. 322.

the Turkish Government, in order to colonize Palestine **under the sovereignty of the Sultan»**.

As soon as the 3rd Zionist Congress convened in Vienna (15-18 August, 1899) Herzl had a ready-made formulation of the **meaning** of «Charter». He decided to address Zionist participants in the Congress as «Deputies» or «Representatives» of the Jewish people. Then he went on to evaluate the reception accorded to the Zionist delegation by the German Kaiser during his visit to Jerusalem as a gesture of recognition granted to the Zionist movement in terms of legality and loyalty. The Sultan was described as the «sovereign owner of Palestine», and the Zionists were to refrain from taking any step that could arouse the sovereign's rightful mistrust or justified fears.

The sought **charter** was thus incorporated into the official Zionist platform as formulated by Herzl:

«Our efforts are directed towards obtaining a charter under the sovereignty of His Majesty the Sultan. It is only when we are in possession of such a charter, **which must carry with it the public recognition and the legal guarantee of our rights,** that we can begin a great colonization action. In return for granting this charter, we shall let the Turkish Government receive the benefit of great advantages»[25].

(25) *Zionistiche Schriften, op. cit.,* p. 252.

Nothing is said about the **rights** of Palestine's indigenous population, or their attitude towards Zionist colonization of their own country. Herzl finds it convenient and expedient to maintain his claim that no marked contract does seem to exist in the Ottoman Empire between sovereignty and **private property.** The Zionists could always capitalize on the fact that such **charters** «had been in widespread use» since the late 16th Century in the Ottoman Empire. The idea of obtaining a **charter** was not new, when viewed against the historical background of those privileges granted to European powers and merchants in the famous concessions known as **Capitulations.** As the Ottoman Empire began to decline, the meaning of such **privileges** or **concessions** underwent a change: «granted almost as acts of condescension (they) thus became embarrassing and humiliating rights»[26]. Hence, the Zionist demands for a charter on similar lines could rely on such a precedent and claim to be made within the limited scope of a «Chartered-Company». The Zionist bid to the Sultan can afford to be sugar-coated in its own manner, as Herzl addresses him:

«What this country needs most is the effort and industrial initiative of our people. The other Europeans who come here, become rich very quickly and run away with the wealth they make. Certainly one

(26) Tibawi — *British Interests in Palestine, 1800-1901* (London, 1961), p. 30.

should make an honest and decent profit out of any enterprise, **but** one should remain in the country where one's fortune has been made»[27].

B. Gentile Zionism

Herzl's attitude to the question of Arab rights has not only been shaped by the imperial-mindedness of Europe during the last two decades of the 19th Century. It had a predecessor in that long tradition of Gentile Zionism which championed the idea of Restoration for the last three centuries. Writing a history of the British movement for the restoration of the Jews to Palestine, a prominent Zionist, Franz Kobler, starts with such an appraisal:

«The establishment of the State of Israel may be righlty looked upon as the greatest collective achievement of the Jewish people in the history of the Diaspora. There is, however, **a non-Jewish element** hidden in the restoration of Israel. The ideal of the Jewish people has in fact for centuries been shared, cherished and pursued by large sections of the nations amidst whom Jews have lived. Among them, the British people holds the outstanding place»[28].

Kobler goes on to assess Britain's role in the restoration movement and in the creation of the Jewish national home. He writes:

(7) See Bein, *op. cit.*, p. 357.

(28) Kobler — The Vision Was There (London, 1956), p. 7.

«Nowhere more than in Britain has the idea of the Restoration of the Jews been developed into a doctrine and become the object of a movement extending over more than three centuries. Only in Britain the leading spokesmen of many generations have been inspired by the vision of a revived Israel. Only there the creation of a Jewish National Home has been a serious and almost continuous issue which was finally translated into reality»[29].

Apart from a very strange influence it exercised on Herz'l mission, Gentile Zionism contained by implication a derogatory view of Arab rights and aspirations. In trying to define the «extent to which Zionism possesses organic roots in Western society and consciousness», an Arab historian of the Palestine problem could describe the phenomenon of Gentile Zionism as «perhaps the most important single sustaining influence which Zionism possesses». He then summarized this strange phenomenon as being:

«based upon an extraordinary mixture of **religious, humanitarian, sentimental,** and **social** factors. At its core it is a paradoxical series of Gentile-Jewish relationships: love and hate, sympathy for the underdog, and aversion from the unfamiliar, guilt for past misdemeanours and the hope of absolution in future amends, gratitude and impatience, owe and contempt. Gentile Zionism is largely the means sought to resolve

(29) Kobler — The Vision Was There (London, 1956), p. 7.

and extrovert this inner tension»[30].

What concerns us here in particular is the view adopted by the Gentile Zionists towards the Jews and the restoration of Israel. For, in championing the idea of restoration its leading spokesmen tended to propagate a certain ready made picture of Palestine and its indigenous Arab population. Without having to go into those doctrines and dogmas extracted from certain apocalyptic traditions of the Bible (i.e. Book of Daniel, and the Revelation of St. John), it could be safely maintained that the so-called Millennarians predicted the 2nd coming of Christ as being closely connected with the restoration of Israel and the return of the Jews to Palestine. Nevertheless, it should be pointed out that both restoration and return were to be pendent upon Jewish conversion to Christianity. Or, as Barbara Tuchman has put it: «The movement was not for the sake of the Jews, but for the sake of the promise made to them»[31]. («Only in terms of a Jewish nation converted to Christianity»). It is only during the beginning of the 19th Century, and from the middle of the century onwards, that the movement found the opportune moment for a shift of emphasis. Conversion was no longer to be considered a

(30) Walid Khalidy — «Reappraisal: an examination of certain Western attitudes to the Palestine Problem» *(Middle East Forum,* Summer 1958), p. 22.

(31) Barbara Tuchman — *Bible and Sword,* (London, 1957), p. 79.

prerequisite for restoration, but rather restoration could very easily precede conversion, or, even be affected without conversion at all.

How did Gentile Zionism envisage Palestine? According to Tuchman, in the period coming up to 1600 «Palestine had been to the English a land of purely Christian associations, though lost to the Christian world through the unfortunate intrusion of Islam. Now it came to be remembered as the homeland of the Jews, the land carrying the Scriptural promise of Israel's return. Interest was centered on fulfilling the Scripture»(32). However, it was not only the religious origin of such puritan hopes that engaged British interest in Palestine and the restoration of Israel at Mid 17th Century during the reign of Cromwell. Political and economic expediency could not remain absent from the scene; and British concern with Palestine came to be conditioned accordingly. As Tuchman puts it: «And from Cromwell's time on, every future episode of British concern with Palestine depended on the twin presence of the **profit motive,** whether **commercial, military,** or **imperial,** and the **religious** motive inherited from the Bible. In the absence of either, as during the 18th Century, when the religious climate was distinctly cool, nothing happened»(33). In other words, a strong factor in the British movement for the restoration of Israel to Palestine was to be found in the argument from the «fulfillment-of-prophecy»,

(32) *Ibid.*, p. 78.

(33) *Ibid.*, p. 93-4.

or «Israel-for-the-sake-of-prophecy». The rationalism of the 18th Century, however, declared such arguments as **untenable**, and unmaked the «irrational» element of all allegorical interpretations of the Bible. It should perhaps be noted that Theologians standing outside the mainstream of Puritanism were not captivated by the argument from prophecy. A certain Dr. Thomas Fuller, for example, devoted a chapter in his book, **«A Pisgah-Sight of Palestine»** (1650), to dispute the current ideas and hopes of Restoration. He considered the Jewish return out of the Babylonian Exile to have already fulfilled all prophecies. Any other remaining promise, according to Fuller, must take the following form:

«Jews' conversion to Christianity without the «temporall regaining» of their old country»[34].

In 1704 Nathaniel Crouch published his travel book **Two Journeys to Jerusalem,** «which kept on being reissued over the next 100 years, with a final edition in 1796». He raised the question that was taken for granted by generations of Restorationists for the sake of prophecy about the **barrenness of the country** (Palestine) in view of that «busy, prosperous population» it was reputed to have supported in «Biblical, Roman and Byzantine times». His conclusion was: **«The general impression of Palestine** as barren was due to the fact that travelers usually saw only

(34) *Ibid.*, p. 98.

the country between Jaffa and Jerusalem, which was never famous for fertility»[35]. But the barren, desolate and neglected impression of Palestine was part of parcel and the doctrines intent upon the fulfillment of prophecies. The Restorationists in Britain and elsewhere in Europe were too eager to prove the **Bible,** irrespective of whatever discrepancies did happen to exist between their inherited, cherished or projected hopes and the reality of Palestine. Even towards the Middle of the 19th Century, when «the full tide of Holy Land emploration, of field geographers and historians «proving the Bible», of earnest tourists intent on following «in the footsteps of the Lord» did break over Palestine (Tuchman, **op. cit.,** p. 109), the British Restorationists continued to cherish their vision of «an Anglican Israel».

With the Syrian Crisis of 1840, however, Palestine became an integral part of the so-called **Eastern Question** and thus ushered into the field of practical international politics. Since Napoleon's campaign to Egypt and Syria, launched as an attack against British interests in the East, the British apostles of restoration started entertaining great fears lest the return of the Jews should take place with the help of «atheistic France» that is at war with Britain. The British scientist, Joseph Priestly, hastened in 1799 to provide the Restoration Movement with a typical image of Palestine. Addressing the «Descendants of

(35) *Ibid.,* p. 99.

Abraham, Isaac and Jacobs», he exclaimed:

«Palestine, the glory of all lands, which is now part of the Turkish Empire, is almost **without inhabitants,** it is wholly **uncultivated, empty** and ready to receive you. But till the fall of this power, which, without deriving any advantage from it, keeps possession of that country, it is impossible that it can be yours. I, therefore, earnestly pray for its dissolution»[36].

(Herzl was to approach the Sultan, a century later, by asking him just to consider that «we are the sole purchasers of an **article** that is worthless to everyone else and unproductive»).

Restorationists at the outset of the 19th Century thought the time was due for a revision of the old condition which rendered restoration pending upon conversion of the Jews. Their appeals to the British Government pleaded the use of Britain's influence with the Porte «to give up that part of their territory from which the Jews have been expelled, **to its** rightful owners». Still, the end of the 4th decade (1839) was to witness another shift of emphasis, or perhaps a change of heart. The advocates of Restoration decided to affect a «transition from pious anticipation to active intervention» (Kobler), and Lord Shaftesbury came out with proposals calling upon Palmerston's England to assume the mission of «imitating the deed

(36) See Kobler, *op. cit.*, p. 45.

of Cyrus». In August 17, 1840 **the Times** published an article entitled «Syria — the Restoration of the Jews», stating:

«The proposition to plant the Jewish people in the land of their fathers, under the protection of the Five Powers, is no longer a mere matter of speculation, but of serious political consideration»[37].

A few days earlier Palmerston wrote to his Ambassador in Constinople instructing him «strongly to recommend (The Turkish Government) to hold out every just encouragement to the Jews of Europe to return to Palestine». (August 11, 1840. See Tuchman, **op. cit.,** p. 113). He instructed the Ambassador to make use of this two-fold argument in support of such a policy:

(a) «It would be of manifest importance to the Sultan to encourage the Jews to return and settle in Palestine because the **Wealth** which they would bring with them would increase the resources of the Sultan's dominions», and

(b) «The Jewish people, if returning under the **sanction** and **protection** and at the invitation of the Sultan, would be a check upon any future evil designs of Mehemet Ali or his successor...».

(37) *Ibid.,* p. 61.

It can be clearly seen that Restorationists no longer confined themselves to the argument of «Israel-for-prophecy's-sake». Lord Shaftesbury, for instance, lays emphasis on political and economic arguments as well. Among these are: «the close bond of the Jews with their ancient homeland», their «indestructible Messianic hope», their «prodigious industry and perseverance», and «long ages of suffering». Politically speaking, the advocates of Restoration demanded that Britain should acquire Palestine for the Jews, so as to create there «a neutral Jewish state between the Sultan and the Pasha». (Edward Bickersteth, see Kobler, **op. cit.**, p. 63).

Almost all appeals and projects for Restoration from 1840 onwards draw upon the interests of «British policy in the levant». The order of the day becomes the question of «Tranquilisation of Syria and the East », and the prescribed remedy for the «Miseries of Asiatic Turkey» is nothing but «furtherance of the establishment of Jewish colonies in Palestine». Before parties of British Royal Engineers were to embark upon the task of surveying Palestine and exploring the Holy Land, former high ranking colonial officials hastened to submit projects for colonization. These projects drew inspiration from the idea of «using the Jews as a British wedge within the Ottoman Empire». Lord Shaftesbury could still admit that «the soil and climate of Palestine are singularly adapted to the growth of produce required for the

exigencies of Great Britain», or «Palestine must belong to the Jews and Jerusalem is destined to the seat of the Jewish Emipre» — as Sir Moses Montefiore is reported to have said. He even found it only natural to propose his restoration plan as a means of «adjusting the Syrian Question», and promoting the fertility of «all the countries between the Euphrates and the Mediterranean Sea». But Shaftesbury's idea of colonizing Syria did include something peculiar in the eyes of Herzlian Zionism or the authors of the Balfour Declaration. Regarding the Jews as «somehow passive agents of the Christian Millennium», he foresaw their «submissiveness», and accordingly expected that «they will submit to the existing form of government» (Tuchman, p. 128).

As a matter of fact, the same Lord Shaftesbury was a staunch opponent of the **Emancipation Bill** (1858) which permitted British Jews to become members of Parliament without having to take the traditional Oath. He was not in favor of admitting the Jews to «full citizenship on equal terms», lest his love for «God's ancient people» and the waiver of the oath could amount to a «violation of religious principles». Actually it was the «less pious liberals» who argued for Jewish emancipation, rather than the zealous Restorationists and advocates of prophecy. Again, Barbara Tuchman has given us the following critical appraisal of the whole Restoration Movement. She wrote:

«Actually it was not love for the Jewish nation, but concern for the Christian soul, that moved all these good and earnest people. They were interested only in giving to the Jews the gift of Christianity, which the Jews did not want; civil emancipation, which the Jews did want, they consistently opposed»[38].

If they denied the Jews civil emancipation in Britain, how did Restorationists then view the indigenous Arab population of Palestine? Zionism no doubt has a precursor in Edward **Mitford,** who was perhaps the «first Restoration writer to raise the problem of the indigenous population and of their attitude towards Jewish immigrants». Almost 50 years before Theodor Herzl was to submit to his Diary that Zionist master-plan for «voluntary expropriation» and evacuation of the «natives», Mitford wrote the following in his «Appeal on behalf of the Jewish nation in connection with British Policy in the Levant» (1845):

«The country, compared with its extent, is at present thinly populated, yet the **pressure** caused by the introduction of so large a body of **strangers** upon the **actual inhabitants** might be attended with injurious results. Before, however, attempting to make a settlement it would be desirable that the country should be prepared for their reception. This might be done by inducing the Turkish Government **to make**

(38) Tuchman, *op. cit.*, p. 121.

the Mohammedian inhabitants fall back upon the extensive and partially cultivated countries of Asia Minor, where they might be put in possesion of tracts and allocations, equally advantageous, and far superior in value to those they abandoned»[39].

Closely connected with its manifest indifference to Arab rights and aspirations, Gentile Zionism took it upon itself since the 2nd half of the 19th Century to lay so much emphasis on Jewish colonization as a bearer of the civilizing **mission of Europe to the** Orient, almost four decades before Herzl were to retrace their steps. Gentile Zionists in the sixties were prescribing roles for Jewish colonization within the European framework of the theory pertaining to a «cultural vacuum».

If Palestine and the neighboring areas are not «vacant» or «void of inhabitants», then Jewish colonization has a mission to perform among the natives. For someone like the French Ernest Laharanne, private secretary to Napoleon III, the Jewish role vis à vis the natives — although inspired with the idea of «progress» in a human civilization and the **rights of nations** — ranks high since the time has arrived in 1860 for the Jews to **reclaim** their ancient fatherland from Turkey, «which has devastated it for ages». His great expectations betray such a vein of sentimentality:

(39) See Kobler, *op. cit.*, p. 77.

«You will become the moral stay of the East! You have written the Book of books. Become, then, the educators of the **wild Arabian hordes** and the African peoples. Let the ancient wisdom of the East, the revelations of the Zend, the Vedas, as well as the more modern Koran and the Gospels, group themselves around your Bible. They will all become purified from every superstition and all will proclaim alike the principles of freedom, humanity, peace and unity. You are the triumphal arch of the future historical epoch...»[40].

Writing a year later, the Englishman Dr. Thomas Clarke advocated a restoration of Israel from the standpoint of British politics. His book on **«India and Palestine»** (Manchester, 1861) put forth the call for Jewish Restoration «viewed in relation to the Nearest Route to India» — as the alternative title indicates. The ideas he expounded in that book were to be re-echoed by Herzl some 40 years later. He maintained among other things:

«... I, as an Englishman, cannot blind myself to the fact that, while it would be an inestimable boon to the house of **Israel,** it would be also of the greatest possible advantage to us; for it has been a necessity in times past that the kingdom of Turkey shall exist as a neutral power, and that its boundaries should

(40) See Moses Hess, *Rome and Jerusalem* (New York: 1945), p. 140.

remain intact as a **defence** and **barrier**... surely... the occupation of Palestine by... the Jews, under the protection of England, must be a greater necessity than ever. ... If England, again, is... relying upon its commerce as the cornerstone of its greatness; if one of the nearest and best channels of that commerce is across the axis of the three great continents; and if the Jews are essentially a trading... people, what so natural as that they should be planted along that great highway of ancient traffic?

«... Syria must be occupied by a trading people — it lies in the great route of ancient commerce; and were the Ottoman power to be displaced, that old commercial route would immediately reopen... In fine, Syria would be safe only in the hands of a brave, independent, and spirited people, deeply imbued with the sentiment of nationality... such people we have in the Jews... Restore them their nationality and their country once more, and there is no power on earth that could ever take it from them[41].

Jewish colonization of Palestine is thus placed within the framework of British imperial policy. The exploration of Palestine at the hands of various «experts» and «surveyors» working for the **Palestine Exploration Fund** (1865) was to inspire Colonel Charles Warren in his book on **The Land of Promise**, or, **Turkey's Guarantee** (1875) with the idea of develop-

(41) Nahum Sokolov — *History of Zionism,* Vol. I, pp. 138-9.

ing the country at the hands of the «East India Company», so as to make room for 15 million inhabitants. Warren thought it appropriate to provide an answer for the question, «And what of the Arabs of Palestine?», by posing the question: «Who are the Arabs?» His answer found the Arabs to be :

«... certainly not Turks in any degree: they are for the most parts not Arabs of Arabia, of the Desert. Then who are they? It has long been known, and no person has thrown more light upon the subject than M. Ganneau, that the people of Palestine are of a very mixed race: some of Canaanitish decent, some Jewish, some of Arabia. It is evident that many of them being Moslems are so for convenience, ... We cannot, therefore, look upon the natives of Palestine as rigid Moslems of one race; but we must recognize them as descendants of Canaanites, Israelites, Greeks, Romans, Arabs, and Crusaders, now professing the Moslem or the Christian faith, according to circumstances, but retaining above everything the ancient traditions — yes, and in some instances, I have little doubt, their veritable old religion»[42].

It would go beyond the limited scope of this paper, if one were only to survey that strange legacy of Gentile Zionism throughout three centuries of European history. Herzl and the Zionist movement were no doubt influenced by the general climate of ideas

(42) *Ibid.*, Vol. II, pp. 269-270.

and opinions propagated by numerous generations of Gentile Zionists. They took advantage of such images and impressions bequeathed to posterity and depicting «the return of the Jews» under the aspects of desolateness, waste, backwardness and what not.

Almost 20 years before Herzl convened the First World Zionist Congress, a certain Rev. James Neil chose a very revealing title for his book: «**Palestine Re-peopled**» or «Scattered Israel's Gathering: A sign of the Times» (1877). He foresaw the fulfillment of prophecy at hand, and insisted on the return of the Jews «before their conversion», in very considerable numbers. His impression of the country and its inhabitants conveyed the following:

«This return is to a country **ruined** and **depopulated**, and where those who now form the great bulk of the people — the Muslim Arabs — are entirely **ignorant**, and in every way **unfit to form a dominant body**. The Jews, therefore, are at this moment in considerably greater numbers than any other civilized nation in the Holy land»[43].

The subsequent history of the Zionist Movement were to take advantage of such arguments and utilize them to justify all violations of Arab rights and the inherent disregard for the rights of the majority.

C. The Blessings of Zionist Idealism

(43) Rev. James Neil — *Palestine Re-peopled*, 2nd ed. (London, 1877), pp. 10-11.

In the autumn of 1898 Herzl gathered his first-hand impressions of the coveted land on the spot: he visited Palestine at the head of the Zionist Delegation, seeking an audience with the German Kaiser and hoping to win his support for the idea of Protectorate. Nearly a year later (July 1899) he wrote down the first outline for his Utopian novel — Old-New Land (Altneuland), but gave it the tentative title of «The New Zion». The final version came out towards the end of 1902 as «Altneuland», under the following motto: «If you will it, it is no fable».

Perhaps Herzl intended the novel as a reply to those who opposed his conception of Zionism and levelled such charges against it: «Utopian, unrealistic and impractical». He, therefore, decided to silence his critics and meet with their objections by depicting and demonstrating the positive achievement of Herzlian Zionism as projected into Palestine after 20 years of Jewish colonization. The core of his **Old-New Land** became that image of Palestine entitled «the Prosperous Land». It is as though he was trying to make up or counterbalance that version of his Zionism expounded in both the **Jewish State** and the **Diaries**. The Epilogue of the novel reverts back to the motto at the front page:

«... But, if you do not wish it, all this that I have related to you is and will remain a fable. ... Dreams also are a fulfillment of the days of our sojourn on Earth. Dreams are not so different from Deeds as

some may think. All the Deeds of men are only Dreams at first. And in the end, their Deeds dissolve into Dreams»[44].

What kind of a dream did Herzl then depict in his novel? It is a dream which pictures the Arabs of Palestine in a state of happiness under the aegis of Zionist idealism. Herzl chooses to give the Arabs all those benefits and blessings of Zionist colonization and those of his vision about transforming Palestine into the prosperous land of a new society and a progressive social order. How does he go about this? One of the characters Herzl specially moulds for his tendencious novel is that of a prominent Palestinian Arab, a Moslem by the name of Raschid Bey:

«A handsome man of thirty-five... He wore dark European clothing and red fez. His salute to them was the oriental gesture which signifies lifting and kissing the dust. ... replied in German — with a slight northern accent. ... He studied in Berlin. His father was among the first to understand the beneficent character of the Jewish immigration, and enriched himself, because he kept pace with our economic progress. Reschid himself is a member of our New Society»[45].

It is this German-educated Palestinian Arab who

(44) Herzl — *Old-New Land* ("Altneuland"), New York, 1960, p. 296.

(45) *Ibid.*, p. 68-9.

is chosen by Herzl as the proto-type of what was left from the indigenous population of the country to illustrate Herzl's new vision of a Jewish Palestine, where «the Arabs live in friendship side by side with the Jews», and where «A stranger must feel at home among us». The following conversation between the Zionist Steineck, an ex-Prussian officer by the name of Kingscourt, and Reschid Bey could perhaps convey Herzl's intentions at best:

— «Devil take me!» cried Kingscourt. «But this is Italy!»

— «Cultivation is everything!» roared Steineck aggressively, as if he were being contradicted. **«We Jews introduced cultivation here».**

— «Pardon me, sir!» cried Reschid Bey with a friendly smile. «But this sort of thing was here before you came — at least there were signs of it. My father planted oranges extensively». ... «I know more about it than our friend Steineck, because this used to be my father's plantation. It's mine now.»... ...

— «I don't deny that you had orange groves before we came», thundered Steineck, «but you could never get full value out of them».

— Reschid nodded. «That is correct. Our profits have grown considerably. Our orange transport has multiplied tenfold since we have good transportation facilities to connect us with the whole world.

Everything here has increased in value since your immigration»[46].

However, it is left for the Gentile Kingscourt to address those leading questions to Reschid Bey — as Herzl seems keen on providing Zionist answers for them:

Kingscourt: «Were not the older inhabitants of Palestine ruined by Jewish immigration? **And didn't they** have to leave the country? I mean, generally speaking. That individuals here and there were the gainers proves nothing».

Reschid: «What a question! It was a great blessing for all of us. Naturally, the land-owners gained most because they were able to sell to the Jewish society at high prices, or to wait for still higher ones. I, for my part, sold my land to our New Society because it was to my advantage to sell.»... ...

Kingscourt: «... But I wanted to ask you, my dear Bey, how the former inhabitants fared — those who had nothing, the numerous Moslem Arabs».

Reschid: «Your question answers itself. Those whe had nothing stood to lose nothing, and could only gain. And they did gain: Opportunities to work, means of livelihood, prosperity. Nothing could have been more wretched than an Arab village at the end of the Nineteenth Century. The peasants' clay hovels

(46) *Ibid.*, p. 121.

were unfit for stables. The children lay naked and neglected in the streets, and grew up like dumb beasts. **Now** everything is different. They benefited from the progressive measures of the New Society whether they wanted to or not, whether they joined it or not. When the swamps were drained, the canals built, and the eucalyptus trees planted to drain, and «cure» the marshy soil, the **natives** (who, naturally, were well acclimatized) were the first to be employed, and were paid well for their work».

Kingscourt: «You're queer fellows, you Moslems. Don't you regard these Jews as intruders?»

Reschid: «You speak strangely, Christian. Would you call a man a robber who takes nothing from you, but brings you something instead. The Jews have enriched us. Why should we be angry with them? They dwell among us like brothers. Why should we not love them?»

Kingscourt: «Hm — Hm! Quite right. Very fine. Sounds reasonable. But you're an educated man, you've studied in Europe. I hardly think the simple country or town folk will be likely to think as you do».

Reschid: «They more than anyone else, Mr. kingscourt. You must excuse my saying so, but I did not learn tolerance in the Occident. We Moslems have always had better relations with the Jews than you Christians. When the first Jewish colonists settled

here half a century ago, Arabs went to the Jews to judge between them, and often asked the Jewish village councils for help and advice. There was no difficulty in that respect. So long as the Geyer policy does not win the upper hand, all will be well with our common fatherland»[47].

Even Herzl's visionary Zionism and his projected idealism betray the inherent tendency to misrepresent the question of Arab rights. It goes without saying that his German-educated mouthpiece falls very short of doing justice to the Arabs of Palestine. His Gentile Protagonist does not fail to see the point, but the burden of the proof is constantly left with that imaginary character invented as a plea for the blessings accuring from Jewish colonization to the «rejoicing land-owners».

When the state of Israel was proclaimed and the bulk of the natives «spirited across the border», the authors of the Declaration of Independence deemed it expedient too by reminding the rest of the world that the Zionist colonists in Palestine «brought the blessings of progress to **all inhabitants of the country».** That these blessings meant nothing short of an Arab exodus from the Palestinian homeland was a «fault» which neither Herzl nor his successors were ready to acknowledge at all. They are only concerned with **Jewish rights,** no matter what the securing of

(47) *Ibid.,* pp. 123-125.

such rights means for the life and welfare of the indigenous Arab inhabitants of Palestine.

D. Practical Zionism: Policy of Economic Penetration

Although Herzl is willing to admit, when he addresses himself to German as well as Ottoman authorities, that the Jews are **not** bound to Palestine through any valid title of ownership, the Zionist line of policy during his presidency of the World Zionist Organization did not favour infiltration or small-scale colonization till such a time when the **Charter** was obtained. The Zionist foreign policy at the time was formulated by Max Nordau in this principle:

«Our aspirations point to Palestine as a compass points to the north, therefore we must orient ourselves towards those Powers under whose influence Palestine happens to be».

Thus, it is safe to describe the period extending from 1897-1914 as the period of Turkish orientation (with Germany as an ally) in the history of the Zionist Movement.

But Herzl's political Zionism was challenged by strong factions of East European delegates within the Organization. No sooner did the British Government convey its offer for Jewish colonization in East Africa (Uganda), than the so-called «Palestinian Zionists» (sometimes referred to as «Tziyyone Zio-

nists») started agitating for a substitute platform and a new line of policy. One of the prominent leaders of this faction was no doubt the Russian Odessa-born Zionist Menachem Ussishkin. In October 1903, he formulated a counter-programme to Herzl's «Charter Zionism», and insisted that the desperately needed Charter was to be built «upward from below». The correct and practical procedure, according to Ussishkin, was to start by creating a viable nucleus of Zionist colonization-work in Palestine and turn it into a stepping-stone for acquiring the Charter. As he put it:

«When we in Palestine shall have created a healthy Jewish core, we cannot fail to have the Charter, which we shall acquire by action from Palestine outward»[48].

After Herzl's death, the opponents of political Zionism decided on a shift of emphasis in Zionist policy and activity. A staunch advocate of «spiritual Zionism», Achad Haam, declared that «Israel will not be redeemed by Diplomats but by prophets». Then he went on to say that «no state could be built on a Charter, which could only be the ceiling and roof of a political organism; the establishment of a state and its basis and foundations must be slow and gradual settlement»[49]. In the same breath, Chaim Weiz-

(48) See Bein, *op. cit.*, p. 472.

(49) See Joseph Klausner — *Menachem Ussishkin* — His Life and Work, (London, 1944), p. 33.

mann hastened to summarize before the 8th Zionist Congress (Basel 1907) the stand advocated by his own version and slogan of «synthetic Zionism» in the following declaration:

«Our diplomatic work is important, but it will gain in importance by actual performance in Palestine. If we achieve a synthesis of the two schools of Zionism, we may get past the dead point. Perhaps we have not done very much till now. But if you tell me that we have been prevented by local difficulties, I will not accept it. It is not wholly the fault of the Turks. Something can always be done... The Charter, that Herzl had dreamed of, would be without value unless it rested, so to say, on the very soil of Palestine, on a Jewish population rooted in that soil, on institutions established by and for that population. **A Charter was merely a scrap of paper...** We had nothing to back it with except work on the spot. ... but the presentation of our case (before the tribunals of the world) could only be effective if, along with it, there was **immigration, colonization, education**»[50].

However, it was the 7th Zionist Congress (Basel, 1905) which tried to bridge the gap between the «Government Party» (Herzlian Zionists) and the «Ziyyone Zionists», or the advocates of immediate practical work in «Palestine, Syria, any other part of

(50) Chaim Weizmann — *Trial and Error*, (New York, 1949), p. 122.

Asiatic Turkey, the Sinai peninsula, and the Island of Cyprus»[51]. The compromise resolution effected by the congress to solicit the support of all factions and platforms ran like this:

«The Seventh Zionist Congress resolves that, concurrently with **political** and **diplomatic** activity, and with the object of strengthening it, the systematic promotion of the aims of the movement in Palestine shall be accomplished by the following methods:

1 — Exploration.

2 — Promotion of agriculture, industry, etc., on the most democratic principle possible.

3 — Cultural and economic improvement and organization of Palestine Jews through the acquisition of new intellectual forces.

4 — Acquisition of concessions.

«The Seventh Zionist Congress rejects every aimless, unsympathetic, and philanthropic colonization on a small scale which does not conform to the first point in the Basel Program»[52].

What was the ruling idea in this post-Herzlian revision of Zionist methods & practices? The spokesmen for practical Zionism came to be aware that

(51) See article on «Zionism», *The Jewish Encyclopedia* (1905), p. 682.

(52) Ibid., p. 681.

a Charter may meet certain claims, but is no sufficient guarantee for rights. They did realize that no valid historical title could amount to anything in International Law, since «the Jewish claim to Palestine on merely historical grounds» is obsolete and superannuated. Hence, their main concern became that of inaugurating a new **policy of economic penetration.** Otto Warburg, a professor of botany at the University of Berlin and a prominent German Zionist of the practical school, argued for the promulgation of a new Zionist programme on the following lines: If the Jewish claim to Palestine on merely historical grounds «was not worth much now-a-days», or, if the Zionist claim is based on the grounds that the Jews had Palestine 2000 years ago, then such a claim by itself is not effective at all with the Big Powers of the time. Therefore, Warburg argued, the Zionist Movement should focus its attention and activity on the creation of valid modern title.

How did he envisage this title («Modern Rechtstitel»)? Warburg said:

«A valid modern title would have to rest on the economic dependence of Palestine upon Jewish investment, initiative, and resources»[53].

In other words, Zionist economic penetration should provide the means that enable Zionist coloni-

(53) See Horace Meyer Kallen — *Zionism and World Politics,* (London, 1921), p. 208.

zation to lay down claims for Palestine, if not **de jure**, then **de facto**: By subjecting the economic life of the country to Jewish influence, and attributing all essential progress made there to Jewish initiative and high finance. This was, of course, equivalent to following an outright policy of economic penetration and trying to gain control of Palestine's economic life.

What is the significance of such a policy? How did it appear in the imagination of its apologists? According to one prominent Zionist writer, it was merely «an extension of the general policy of Europe abroad, to the sphere of Jewish interests»[54]. In other words, Zionist economic penetration of Palestine was to be modelled after the imperialist policy of Europe in Asia and Africa. Zionism was to claim for itself a «civilizing mission» with the task of filling the «cultural vaccum». As Max Nordau was to tell the 8th Zionist Congress (The Hague, 1907) amidst great ovations:

«We mean to go to Palestine as the standard-bearers of civilization with the mission of extending the moral frontiers of Europe to the Euphrates»[55].

It must be noted, however, that a Zionist extension of the moral frontiers of Europe meant also a

(54) *Ibid.*

(55) Max Nordeau — *Zionistische Schripten,* VIII Kongressrede, (Koln — Leipzig, 1909), p. 176.

determination to acquire rights and concessions through achievements, shabby deals and flagrant usurpation. By 1908 the idea of a «legal» Charter has been shelved, and the **Palestine Office** was created under the direction of Arthur Ruppin to pursue the idea of a «valid modern title». In the words of Kollen, this office in Jaffa «purported to function practically as a home ministry, collecting information, guiding and assisting would-be settlers and directing and co-ordinating all sorts of activities». (**Ibid.** pp. 108-109). Therefore, when the 9th Zionist Congress met in Hamburg (Germany) towards the end of 1909, the public Orator of the movement, Max Nordau, stood up to issue the following declaration:

«We respectfully deposit the Charter idea in the archives of modern political Zionism and speak of it no more»[56].

By 1911 the practical Zionists were able to gain control of the World Zionist Organization and carry Otto Warburg to the presidency, in place of Herzl's successor, David Wolffsohn. Expressing the prevailing mood or sentiment of the Zionist Movement in September, 1913, Arthur Ruppin could assure the 11th Zionist Congress that:

«We have come to terms with the fact that we must achieve our object not via the Charter, but via

(56) See Leonard Stein — *The Balfour Declaration (Lodon*, 1961), p. 64.

practical work in Palestine»[57].

During that same Congress Weizmann was made Chairman of the permanent committee, and thus began his ascent to the leadership of the movement. When Weizmann came to appraise the period between the death of Herzl and the outbreak of World War I, he wrote the following in his Autobiography:

«Between 1906 and 1914 we accumulated a body of experience, anticipated our future problems and laid the foundations of our institutions»[58].

The putting into effect of the Zionist economic penetration policy towards achieving the object of Zionism in Palestine is a clear indication of the procedure adopted by the World Zionist Organization to establish **de facto rights** in Palestine, and lay the «foundations» or justifications for the cherished **de jure** recognition. Whenever the Arab majority showed signs of asserting its own rights in the face of Zionist claims and pretensions, to say nothing of violations and infringements, the typical Zionist reaction on the eve of World War I was a carefully planned attempt to win over the Arab movement to its side against Turkish oppression and rule. Herzl himself had a chance in the spring of 1899 to hear an Arab warning to the Zionist movement, asking the

(57) Weizmann, *op. cit.*, p. 132.

(58) *Ibid.*, p. 128.

leaders of that movement to drop their dangerous claims and take the reality of Palestine into their consideration. In 1905 Max Nordau told the 7th Zionist Congress that the Arab national movement could touch on Palestine also, thus forcing the Turkish Government to resort to force in defence of its sovereignty and rule over Syria and Palestine. The Zionist tactics during the period of «Turkish-German Orientation» were bent upon taking advantage of the threat inherent in Arab national aspirations by provoking Ottoman concern for the integrity and sovereignty of the Ottoman Empire. The idea was to negate Arab rights and demands by volunteering to defend the Sultan and his rule, and by exaggerated emphasis on Zionist loyalty to the High Porte and readiness to stand by it.

In fact, the Zionist attitude towards the Arab national awakening betrays a great deal of «manipulaton» in Zionism's conception of Arab rights and aspirations. Weizmann tells us in his **Trial and Error,** for instance, that it was from Victor Jacobsen — director of the local branch of the Anglo-Palestine Bank in Beyrouth — that «I first heard something of the nascent Arab national movement» in 1907. Then he goes on to describe Palestine as «one of the most neglected corners of the miserably neglected Ottoman Empire», where the Jews constituted ca. 80,000 out of a total population amounting to more than 600,000. He admits, moreover, that the Jewish

settlers in Palestine were used as «catspaws» in that game of intrigue played by European powers as «benefactors» and «protectors» of the Jewish community[59].

But a decisive turning-point in the policy of the Zionist Movement towards the Arab question in the Ottoman Empire occurred in the year 1913, which marked a new phase of Zionist attempts to affect a **rapprochement** with the leaders of the Arab national movement, and perhaps to conclude an Arab-Zionist Entente. What inspired such a policy? What were the factors that moved the Zionists to adopt a new line of policy?

E. Policy of Arab-Zionist Entente

Arab opposition to Zionist colonization and immigration goes back to the early days of **Hoveve Zion** settlers in the 1880's[60]. The Zionists, on their part, were always aware of the threat which Zionism constitutes to Arab rights. But they kept on producing their classical argument that «Jewish immigration into Palestine could only benefit the local population in particular and the Ottoman Empire in general, since the Jews would provide the **manpower, capital**

(59) *Ibid.*, p. 125, p. 142-3.

(60) For a full account of Arab reactions see: Neville Mandel — «Turks, Arabs and Jewish Immigration into Palestine, 1882-1914», St. Antony's Papers, No. 17 Oxford, 1965).

and **techniques** necessary for the advancement of Palestine»[61]. But in spite of all Zionist official declarations «to the contrary», Arab objections to Jewish colonial activities in Palestine never weakened in their resentfulness, apprehensiveness, suspicion or antipathy. The Arabs of Palestine rejected the presence of the newcomers in their midst, whether one looks at the reaction of the peasants, or that of tradesmen and artisans in the towns, or the «most politically aware» among the educated Arabs. Some of the roots for such a natural attitude on the part of Palestine Arabs are to be sought in the manner of conduct experienced at the hands of the early settlers. As early as the 1890's no lesser a Zionist than Achad Haam was to come back from a visit to Palestine with this **Truth** about the attitude of the colonist to the native population:

«And what are our brothers in Palestine doing? The very opposite! They were servants in the country of their exile, and they suddenly find themselves in a state of unbounded liberty, of unbridled liberty such as can only be found in Turkey. This sudden change has brought about within them a **tendency towards despotism** as is always the case «when a servant becomes a master», **they treat the Arabs with hostility and cruelty, curtail their rights in an unreasonable**

(61) See Mandel — «Attempts at an Arab-Zionist Entente, 1913-1914», *Middle Eastern Studies,* Vol. I, No. 3. April 1965, p. 241.

manner, insult them without any sufficient reason and actually pride themselves upon such acts, and nobody takes any action against this despicable and dangerous tendency»[62].

When Herzl's Zionism appeared with the slogan of «voluntary expropriation», it could certainly reckon with hostility on the part of displaced Arab peasants in Palestine. In February 1905 a Palestinian Arab Christian by the name of Neguib Azoury published his book on the «Awakening of the Arab Nation» (**Le Reveil de la Nation Arabe**, Paris, 1905), striking thereby «a new note of warning» against Zionist ambitions in Palestine. Azoury prefaced his book with the following prediction concerning the course of future events:

«Deux phénomènes importants, de même nature et pourtant opposés... se manifestent en ce moment dans la Turquie d'Asie : ce sont, le réveil de la nation arabe et l'effort latent des juifs pour reconstituer sur une très large échelle l'ancienne monarchie d'Israel. Ces deux movements sont destinés à se combattre continuellement, jusqu'à ce que l'un d'eux l'emporte sur l'autre. Du resultat final de cette lutte... dépendra le sort du monde entier»[63].

(62) Achad Haam — «Die Wahrheit aus Palastina» in *Am Scheidewege*. Gesammelte Aufsatze. Bd. 1, (Berlin, 1923).

(63) See: Albert Hourani — *Arabic Thought in the Liberal Age, 1798-1939*, (Oxford, 1962), p. 279.

After the Young Turks' Revolution in 1908, the Zionists decided to conduct a large scale campaign destined to win for their aims the sympathies of Jewish subjects in the Ottoman Empire as well as those of Turkish ruling authorities. The coming to power of the Young Turks meant a lifting of the ban restricting Jewish immigration to Palestine. On the other hand, Arab opposition to the despotic measures practised by the ruling «Committee of Union and Progress» gained in momentum and strength. In 1911 Arab deputies in the Ottoman House of Representatives attacked the government for its lenient policy towards Jewish immigration to Palestine and the facilities it offered for the transfer of Arab lands and investment of Zionist capital. As soon as members of the Zionist Executive realized the «disadvantages» that could result from the Turko-German orientation in the policy of the movement, the president of the World Zionist Organization, Wolffsohn, felt it was opportune to call the attention of the official Zionist representative in Constantinople (Victor Jacobsen) to: «the Zionists' indebtedness to Britain, an indebtedness exceeding that of all great powers taken together».

British policy, for its part, was trying to check the increasing German influence which was considered a military and economic threat as well. Zionist leaders in Britain took it upon themselves to maintain British interest in Palestine and in the Zionist Movement as the appropriate tool for securing imperial

interests. Thus, by 1913 influential Zionist circles decided on a shift in orientation «towards **(that)** power under whose influence Palestine» may happen to fall, when the hour of decline and disintegration strikes for the Ottoman Empire. The safest policy appeared to be: pretending neutrality, while betting on the winning horse. Dictates of British imperial interests at the time pointed out towards a rapprochement with the Arab national movement. Accordingly, the Zionists followed suit, and put their means at the disposal of British political schemes, hoping to obtain Palestine as a reward.

These and similar considerations prompted the leaders of the Zionist Movement to conduct negotiations in the spring of 1913 with members of the Arab Decentralization Party and pave the way for the conclusion of an Arab-Zionist Entente. What the Zionists were seeking was no less than Arab recognition of their claims and Arab consent to Zionist colonization in Palestine. But the Palestinian leaders refrained from making any concessions, and resented any agreemet to be made «about their land without their knowledge or consent». Other Arab leaders of the time expressed readiness to open the gates of Palestine for Jewish immigrants provided the settlers:

(1) adopt the Arabic language;

(2) were not economically exclusive;

(3) became true Ottoman subjects;

(4) eschewed politics;

(5) took into account the Arab nation, «which today or tomorrow is bound to rise again»[64].

There were still others who rejected the idea of negotiations «before the Arab movement had consolidated itself». Nevertheless, the Zionists were not at all willing to contribute to the consolidation of a force that could turn against them — as Mandel puts it. What they really wanted, according to Jacobsen, was «a mere statement from prominent Arab leaders in Paris» to be used by the Zionist office in the Ottoman capital for reducing government restrictions on Jewish settlement and sale of Arab lands in Palestine. (**Ibid.**, p. 250). The Turkish rulers on their part were interested in soliciting the help of the Zionists, because of their hope in gaining «Jewish financial support for the Empire's bankrupt Treasury». Zionist sources in close touch with Arab national leaders disclosed the fact that the latter were not to be won over through the deceptive lure of «the common semitic spirit».

Most Arab leaders were aware then of the big discrepancy between Zionist «lofty promises» and the actions of Jewish immigrants in Palestine. What Achad Haam wrote in 1891 was still true on the eve

(64) Mandel — «Attempts at an Arab-Zionist Entente», *op. cit.*, p. 243.

of World War I. In spite of all that Nahum Sokolov arrived in Jaffa towards the beginning of April 1914, only to declare in an interview published **by-Muqattam** (April 10th) that:

«Arabs should regard the Jews, not as foreigners, but as fellow-semites **«returning home»,** equipped with European skills which would be of immense value to the local population. ... If obstacles were to be put in the way of Jewish immigration to Palestine, the land would remain waste and of no use to any one. Whereas, if Jewish settlement went ahead, all would benefit»[65].

But the indigenous population of Palestine has suffered most under such lucrative promises and guarantees bestowed by the Zionists for decades now. For them Zionist ambitions and violations of rights cannot just be cancelled out by Utopian excuses. Zionism in practice embodied for them: an economic threat, «the vanguard of a great power invasion», as well as a «political danger». An Arab leader who confronted Sokolov's declaration with a reply, wrote: «curing physical wounds would not heal the wounds of the heart!». It was also understood from Sokolov's phrase of «fellow-semites returning home» that Jewish immigration would proceed irrespective of Arab likes and dislikes. The fears entertained by Arab leaders of the time were **real** fears and not imaginary

(65) *Ibid.*, p. 253.

ones. There is no need to produce evidence in support of this, as the evidence is ample enough.

However, when the time came for a «show-down» with the Zionists, none but the Zionists wanted to avoid the suggested Arab-Zionist confrontation. Perhaps it was because the Turkish Government was no longer in favour of such an entente. Another thing, prominent Palestinian Arabs predicted correctly the nature of the Zionist reaction to Arab demands. There is no better assessment of the whole matter pertaining to Zionist attempts at an Arab-Zionist entente on the eve of World War I than the warning uttered by a prominent Palestinian Arab to a Zionist leader:

«Governments are transient and fluctuate; the peoples are the constant factor, and one must come to an agreement with the people»[66].

Did Zionism act accordingly in its search for recognition? Or was the British orientation in the Zionist movement during the War years part and parcel of a strategy destined for the acquisition of rights in Palestine and the establishment of a Jewish national home, through the «merits» of a document issued by a foreign power and promising somebody else's homeland to an outsider?

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(66) Nasif Bey Al-Khalidy to Dr. Thon, *Ibid.*, p. 260.

PART TWO

Searching for a Majority: 1917-1948

The Zionist search for international recognition accorded to the claim(s) of the movement ended with the publication of the Balfour Declaration as issued by the British Government on the 2nd of November, 1917. Zionism came to consider that Declaration an appropriate substitute for the long-awaited «Charter for colonization». In Zionist measures, it amounted to an official British recognition for the Movement's aims and aspirations intent upon the establishment of a «Jewish National Home» **in** Palestine. The text of the Declaration was soon to be officially approved by France, Italy and the United States of America.

No matter what those motives lurking behind the British espousal of the Zionist cause happen to be, it should not be forgotten that British pledges were also made to the Arabs in support of their independence. Nor should there be need to be reminded that British pledges to the Arabs were accepted in good faith on the part of the latter. It may suffice within this context to judge this allied violation of Arab rights in the light of two statements made by President Woodrow Wilson on February 11th and July 4th, 1918 respectively:

1 — «People are not to be handed about from one sovereignty to another by an interna-

tional conference or an understanding between rivals and antagonists».

2 — «The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, (should be) upon the basis of the **free acceptance** of that settlement **by the people concerned,** and not upon the basis of material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery»[67].

No doubt the Balfour Declaration would constitute a flagrant contradiction to the views expressed in the above statements. But Lord Balfour himself argued from a different logic and entertained other views of his own concerning Arab rights and aspirations, in addition to a specific appraisal of the Arab role in the allied war effort. Addressing the «public demonstration» held by the English Zionist Federation on July 12th, 1920, for celebrating «the conferment of the Mandate for Palestine upon Great Britain and the incorporation of the Balfour Declaration in the Treaty of Peace with Turkey», Lord Balfour told the assembled Zionists at the outset of his speech:

«... For long I have been a convinced Zionist, and

(67) See Herbert Hoover — *Ordeal of Woodrow Wilson,* (New York, 1958), pp. 23, 25.

it is in that character that I come before you today...»[68].

What, then, is the attitude of such a «convinced Zionist», of Balfour's standing, to the question of Arab rights and demands? Let us examine some of the major premises in Balfour's own logic.

A. Lord Balfour's Logic

When Lord Balfour comes to speak of the «Difficulties» which still «lie before us», it is the «inevitable difficulty of dealing with the Arab Question» in Palestine that he places first and foremost. The Arabs are flattered as «a great, an interesting, and an attractive race», only to be reminded of certain «facts» such as:

1 — The Zionist Assembly and the Jews it represents all over the world desire to establish the Jewish National Home under the aegis of Great Britain.

2 — The allies, and Britain in particular, were the true librators of the Arab Race «from the tyranny of their brutal conqueror, who had kept them under his heal for these many centuries.

(68) Lord Balfour — *Speeches on Zionism,* ed. by Israel Cohen, with a Foreword by Herbert Samuel, (Arrowsmith, London, 1928), p. 21.

3 — Britain can claim credit for establishing the «independent Arab sovereignty of the Hejaz».

4 — Britain desires to pave the way «for the future of a self-governing, autonomous Arab-state» in Mesopotamia.

Remembering such items on the list of British achievements for the Arab Race, the Arabs are then called upon by Lord Balfour not to «grudge that small notch» amidst vast Arab territories, for it is «being given to the people who for all these hundreds of years have been separated from it», and who «surely have a **title** to develop on their own lines in the land of their forefathers»[69].

In other words, the Arabs are being asked by Lord Balfour to relinquish their rights to the Palestinian homeland, where they have also lived for hundreds of years. But, what about those most directly concerned with the fate of Palestine — the great majority of its Arab population? They certainly did not authorize Lord Balfour to decide the fate of their country. According to Balfour, however, the majority of the existing Arab population of Palestine, and those critics of the Zionist Movement under the aegis of British Imperialism are only seeking consolation and cover behind a mere phrase: namely, the **principle of self-determination.** This being the case, Balfour

(69) *Ibid.*, p. 23.

rather prefers not to apply that principle «logically and honestly». He dismisses such «pedantry» on mere technical grounds («there is a technical ingenuity in that plea»), and turns to the history of «all the most civilised portion of the world» in order to focus attention on the «absolutely exceptional» nature of the Jewry. According to his logic, the Jewish case:

«falls outside all the ordinary rules and maxims, cannot be contained in a formula or explained in a sentence»(70).

But instead of dwelling on this plea for exceptionality, Balfour's fallacious logic decides on a **salto mortale:** irrespective of what a strictly technical interpretation yields, «the deep underlying principle of self-determination **really** points to a Zionist policy». It is to be noted how the same phrase exchanges roles at the hands of Lord Balfour, pending upon the party he chooses for application. Nevertheless, his conclusion with respect to such a **difficulty** is summarized by the following value-judgement:

«I am convinced that none but **pedants** or people who are prejudiced by religious or racial bigotry, none but those who are blinded by one of these causes would deny for one instant that the case of the Jews is absolutely and must be treated by exceptional methods»(71).

(70) *Ibid.*, p. 24.

(71) *Ibid.*

But Balfour's conviction also partakes in that stigma of being «prejudiced by religious or racial bigotry» more than anything else. He never bothers to tell us why should the principle of self-determination, which he dismisses at will for considerations of «technical ingenuity», **really** point to a Zionist policy, but not to an Arab policy. Why should it be denied to the Arabs who live in Palestine and constitute the overwhelming majorityof the existing population, and granted to the Zionists on grounds supposedly pertaining to the **exceptional** character of the Jewish case?

On the other hand, it is rather interesting to note how Lord Balfour in his «Defence of the Mandate»[72] tends to dismiss charges leveled against Britain's acceptance of the Mandate for Palestine (June 21st, 1922). He starts by enumerating the charges as follows:

(a) Inconsistency of the Mandate for Palestine with the policy of those Powers who invented the mandatory system.

(b) Infliction of considerable material and political injustice upon the Arab population of Palestine.

(c) A great injustice has been committed against the Arab race as a whole.

(d) Subjecting the Arab population to the domination of the Zionist organization.

(72) *Ibid.*, p. 48.

Then he dismisses any charges «in the nature of undue favouritism», although the granting of the concession for the Rutenburg Scheme was nothing but that. As a «convinced Zionist», he resorts to arguments from economic welfare and the blessings of progress in order to persuade his critics that the success of Zionism will usher in an era of prosperity for the existing Arab population. The gist of his argument, however, is to label as imaginary any wrong to be inflicted upon the local Arabs by pursuing the policy of the Jewish national home.

Balfour's logic admits only of imaginary wrongs. His policy allows for the adventurous and seeks justification in the **novelty** of the conducted experiment. When it comes down to the level of persuasion, Balfour's appeal to his critics becomes coated with his hope that they will never «sink to that unimaginative depth» and be blinded to his argument, or prejudiced against his speculations. Therefore, he concludes his defence by declaring that:

«I do not deny that this is an adventure. Are we never to have adventures? Are we never to try new experiments? I hope your Lordships will never sink to that unimaginative depth, and that experiment and adventure will be justified if there is any case or cause for their justification»[73].

What Balfour was after in his futile search for a

(73) *Ibid.*, p. 64.

true justification, pertains to a defence of the «basic ideal» and aim motivating the policy which came to bear the imprint of his name. He claims that his policy is «defensible indeed on every ground», but prefers to limit himself to that ground «which chiefly moves me» — as he puts it.

Nevertheless, both the Balfourian experiment and adventure ought to be judged by their fruits and the resulting consequences. Translated into the language of reality in Palestine, they have meant but one thing: exceptional privileges for Zionism to impose the status of a minority on the Arab majority of the country's inhabitants. Is one not entitled, then, to pass judgement on the logic behind Balfour's policy in terms of the great injustices inflicted since its execution against the Arabs of Palestine? In the words of John Marlowe, Arab national aspirations and legal demands have suffered such a fate at the hands of Zionist colonialism under the aegis of British imperialism:

«The effect of the Jewish National Home policy in Palestine adumbrated in the Balfour Declaration and implemented in the Mandate for Palestine, was not merely to divert and to delay but to **inhibit** the prospect of Arab Independence in that country»[74].

(74) See John Marlowe — *Arab Nationalism and British Imperialism,* (London, 1961), p. 23.

B. The Legacy of Weizmann

Lord Balfour was by no means alone in devising tricks to discredit any opposition whatsoever to the policy of the Jewish National Home. When Chaim Weizmann came to Palestine in the spring of 1918 at the head of the Zionist Commission, he chose to strike the chord of «semitic brotherhood and kinship», and told Arab leaders very bluntly that the Jews were not strangers in Palestine. For him, they were «not **coming to** it, but **returning**». It was Weizmann's tactic to be «suaviter in modo, fortiter in re». Accordingly he could proclaim on September 21st, 1919 — what was reiterated by the Zionist Congress at Carlsbad two years later (1921). He said:

«The Arabs are not strangers; they have lived in the country for centuries... We say: «There is room both for you and for us; you will benefit by our coming in, and we shall benefit by friendly relations between you and us... We cannot go into the country like Junkers; **we cannot afford to drive out other** people. We, who have been driven out ourselves, cannot drive out others. We shall be **the last people to drive off the fellah from the land;** we shall establish normal relations between us and them... That is our attitude towards the Arabs. Any other attitude is **criminal, childish, impolitic, stupid**»[75].

(75) See L. Simon and L. Stein, *Awakening Palestine* (London, 1923), p. 14.

It was, however, the other attitude which prevailed in Zionist practice and colonization work. The idea itself of founding the Jewish National Home in Palestine implied indifference to Arab rights and aspirations. When the preamble for the Mandate was being drafted, the Zionists insisted on the phrase «recognizing the historic rights of the Jews to Palestine». Upon Lord Curzon's refusal to include it in the Preamble, it was Balfour himself who provided a compromise formula such as «recognizing the historical connection of the Jews with Palestine». In 1920 the Palestine Foundation Fund (Keren Hayesod) was established on the basis of an annual tax to be levied from every Jew for the «Upbuilding of Palestine». The Fund turned out to be another chartered company for colonization with the sole aim of investing Jewish capital to fulfill the text of the Balfour Declaration and lay foundations for the Jewish National Home in Palestine. The Jewish Agency for Palestine was conceived by the Zionists as a state within a state under British mandatory power. Everything was being done to persuade the Arabs that they are facing a fait accompli, that«a Jewish National Home will be founded in Palestine» — Churchill White Paper of June 1922. It was the Colonial Secretary, Mr. Winston Churchill, who also laid emphasis in that same White Paper on the following matters:

(a) «The Jewish people», he was understood to have stated, will be in Palestine **as of right** and **not on** suffrance».

(b) Perhaps addressed to Arab susceptibilities: «Immigration will not exceed the economic capacity of the country to absorb new arrivals»[76].

The Zionist attitude to Arab protests and opposition adopted the line of labeling all Arabs as **Agitators,** since they immediately proclaimed, according to Weizmann himself, that «the British had sent for the Jews to take over the country» — which was no farfetched guess on the part of Palestine Arabs. Weizmann's famous tactic was to avoid tackling the main point concerned by resorting to speculations about the Arab mind and mentality. If the Arabs are found «never to attack any problem directly» but to indulge in a «mass of irrelevant verbiage», Weizmann shows no hesitation in explaining «our desire to do everything in our power to allay Arab fears and susceptibilities». But suaveness in mode and approach does not endure long before it betrays the «hard core» of Zionist ambitions and the scala of carefully chosen attitudes towards proper Arab aspirations.

Addressing the 17th Zionist Congress in 1931, Dr. Weizmann disclosed a very significant component in the Zionist attitude to Arab rights and aspirations. He said:

«When we entered upon our work of building up our National Home in Palestine, neither we nor His

(76) Weizmann, *op. cit.,* p. 296.

Majesty's Government lost sight of the interests of the Palestinian Arabs. **But it was assumed** in 1916-1921 that the national sentiments of the Palestinian Arabs would centre in Baghdad, Mecca and Damascus, and find their **natural** and complete satisfaction in the Arab Kingdom which resulted from the Peace Treaty settlement in the Near East».

Then he went on to underline the nature of rights pertaining to the Arabs of Palestine **as individuals,** by drawing the following conclusion from the above statement:

«**It was assumed,** therefore, that **all** that was requested for the Arabs of Palestine was to ensure that their **civil** and **religious rights as individuals** should not be impaired as a result of the establishment of the Jewish National Home»(77).

Only a year before, the same Weizmann told a meeting of the Zionist Actions-Committee in Berlin (August, 1930), to everybody's astonishment, that:

«The Jewish State was never an aim in itself, it was only a means to an end. Nothing is said about the Jewish State in the Basel Programme, nor in the Balfour Declaration. The essence of Zionism is to create a number of important material foundations, upon which an autonomous, compact and productive

(77) Jewish Agency for Palestine: «*Memorandum to the Palestine Royal Commission 1936*», pp. 87-89.

community can be built»[78].

It was part and parcel of Weizmann's tactic, and of the Zionist attitude to Arab rights as well, to attribute all credit in securing Arab rights to independence and freedom to «Zionist foresight» and the British collaboration with the Zionist movement. The project of forming a Jewish Legion to fight with the Allies during World War I, for instance, stems from the Zionist attempt to intervene in the liberation of Palestine from Turkish rule, and thus lay claims for conquest and occupation. Another side to this scheme for a Zionist invasion of Palestine is the tendency to belittle the role of the Arabs in the War and depict them as reluctant advocates of the democratic cause. The following two quotations from Weizmann's Autobiography — **Trial and Error** — could perhaps illustrate at best this Zionist effort towards falsification and twisting of the facts:

«What the position would have been in the Near East, not for England alone, but for the world democratic cause, if we had not provided in Palestine a foothold for England».

Of course, Weizmann claims credit for the Zionist Movement in «letting» Britain have a foothold in Palestine! But this goes to show that Zionism acted as «catspaws» in the British imperialist game for the

(78) See Chaim Weizmann — *Reden und Aufsatze: 1901-1936,* (Tel Aviv, 1937), p. 28.

mastery over the Near and Middle East. He does not hesitate to baptize such Zionist services as positive contributions to the cause of democracy in the world.

The other quotation uttered by Dr. Weizmann amidst such an array of trials and errors is:

«I believe it is also proper to ask **what would have been left today of Arab rights** not only in Palestine, but in Syria, Iraq and even in Saudi Arabia, if **Zionist foresight** had not created the British foothold in the Near East, and strengthened it with a vigorous Jewish settlement whose loyalty to the democratic cause was not merely verbal, but expressed itself in action»[79].

What this amounts to is an «admission» on the part of Zionism and in the confession of Weizmann that the British-Zionist Entente for the control of Arab lands was responsible for securing Arab rights to independence and freedom. Had it not been for **«Zionist foresight»** — which incidentally could stand for a number of things, Arab rights would be non-existent nowadays. Whatever rights the Arabs have been able to obtain, they have obtained by virtue of Zionist effort, foresight, and Zionist loyalty to the cause of democracy.

Later on, this over-emphasis of the Zionist contribution to the allied war effort became an integral

(79) Weizmann — *Trial and Error, op. cit.*, p. 192, 193.

part of Zionist propaganda destined to claim a monopoly for supporting the allied cause in a rather unique manner. When the 22nd Zionist Congress was held after the War (Basel, December 1946) one of the submitted political resolutions as adopted by the World Zionist Conference held in London, August, 1945, was the following claim:

«The Jews of Palestine were the **only** national entity in the Middle East which mobilised its whole potential for the support of Great Britain and her Allies. The war effort of the Jews of Palestine — military and economic — the voluntary enlistment of tens of thousands of men and women for active service, and the mobilisation of all industrial, agricultural and scientific resources — was **unique** in the Middle East»[80].

The idea behind such highlighted uniqueness and overzeal for the democratic and allied cause is not only an indirect and implied verdict being passed on suspected Arab loyalty to the cause, but also a rather conscious attempt on the part of Zionism to present the Arab struggle for freedom and independence in a very unfavourable light, thus ranking so-called «Arab rights» on the side of Nazi terror and darkness.

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(80) See *Political Report* of the London Office of the Executive of the Jewish Agency, submitted to the 22nd Zionist Congress, (London, 1946), p. 77.

C. Minority rights vs. The Arab Majority

Amidst great jubilation in Zionist circles for the incorporation of the Balfour Declaration text in the Treaty of San Remo, Achad Haam's warning must have sounded like a voice in the wildness. This notable spiritual Zionist took it upon himself in 1920 to warn his fellow Zionists not to exaggerate their hopes. His words:

«The Arab people regarded by us as non-existent ever since the beginning of the colonization of Palestine, heard (of the Zionist expectations and plans) and believed that the Jews were coming to drive them from their soil and deal with them at their own will»[81].

This was at least the 2nd Warning of its kind coming from Achad Haam since 1892. His interpretation of the Balfour Declaration was not what Zionism could tolerate or act accordingly to. He said:

«The historic title of the Jews to Palestine does not affect the right of the other inhabitants who are entitled to invoke the right of actual dwelling and their work in the country for many generations. **For them, too,** the country is a **national home,** and they have a **right** to develop national forces to the extent of their ability»[82].

(81) Moshe Menuhin — *The Decadence of Judaism in our* Time. (Exposition Press, New York, 1965), p. 65.

(82) *Ibid.*

But the Zionists were too jubilant and expectant in the early twenties to listen to such cassandra voices. If there really exists an Arab population in Palestine, and these Arabs happen to constitute the majority of the country's inhabitants, then the policy of the Jewish national home should have that orientation which conforms best to the main aims of Zionism. In other words, the primary Zionist task should be: how to affect a radical change in the status quo, and face the Arab majority overnight with a fait accompli, either by subjecting the majority to the dictates of a minority conducting its affairs as a state within the Mandatory Administration, or disregard Arab opopsition and proceed with Jewish mass immigration to Palestine under the pretext of a tricky «economic capacity for absorption».

Max Nordau preferred the more radical solution to the Zionist dilemma of a Jewish minority claiming the right to exercise control over the Arab majority in Palestine. The plan he advocated in 1920 was to become one of the fundamental tenets in Israeli official policy calling for an «Ingathering of the Exiles». He suggested a quick recipe to «over-populate» Palestine with a Jewish majority, and described such a «blitz plan» as the necessary and indispensable minimum towards fulfilling «the Zionist obligation to Britain» and «facing the arab menace». The minimum being, according to Nordau, a «peaceful conquest» of Palestine at the hands of mass immigrating Jewish young men and women, ready to

execute the following program of immediate colonization:

«It is imperative to send to Palestine at least half a million young men and women determined to make it their fatherland, to settle there at any cost, to toil there, to suffer there if need be, **but to affirm with all their might** the will of the Jewish people toward a peaceful **reconquest** of the land of their fathers, which the Allies have promised them»[83].

Nordau went on to declare that such an imperative does not exceed the «minimum necessity», while it serves these purposes:

(a) «the only way of immediately establishing a majority in Palestine;

(b) «there is no other **effective way** of proving our intention to fulfill our part of the **con**majority in Palestine;

(c) «to parry the Arab danger».

Perhaps we ought to reproduce the short discussion that went on at the time of expounding such a plan between Nordau himself and a group of American Zionists composing the American Delegation to the Zionist Conference in London. The biographers of Nordau — his wife and daughter — recorded the following exchange of views and reactions between the frightened American Zionists and Max Nordau, as the grand old man of Zionism at the time:

(83) See Anna and *Max Nordau.* A Biography. (New York, 1943), p. 281.

— «How are these people to be housed?»

— «Nordau answered: «In that climate they can sleep in tents».

— «Who is going to supply the funds for this mass immigration?»
Nordau retorted: — «You are».

— And if they perish?

— «Perhaps some will. But far fewer will than if later on we expose small groups to even graver perils».

Commenting on this mitigated dialogue, the biographers of Max Nordau could only say: «It cannot be denied that the course of events confirmed Nordau's prognostication»[84].

It was Nordau's idea that England could be forced and persuaded at one and the same time to adopt a very wide and broad interpretation to her Balfour Declaration: «England will give us Palestine as our national possession, if we understand how to make use of the land for the mutual benefit of ourselves and them». Now, apart from the stubborn fact that Palestine does not belong to England to dispose of it at Zionist wills and whims, what **mutual benefit** did Nordau have here in mind?

He knows very well that England has no right to annex Palestine after the Allies had solemnly re-

(84) *Ibid.*

nounced all torritorial gains. Another alternative he touches upon: «If Palestine were simply left to its fate». That would mean in Nordau's argumentation the following:

«It would become a bone of contention between France and Feisal's Arab State».

How does this reflect on the British position as projected by the Zionists? Nordau answers:

«England can neither abandon the country to France, nor can she herself build there a solid bridge **between** the Egyptian Nationalists who are waging a bitter struggle for shaking-off the England protectorate, and the Syrian-Arab Nationalists who dream of **a Pan-Arab Empire which would very soon constitute a danger to the safety of the Suez Canal and the route to India».**

After placing England before such a dilemma, Nordau hastens to present the solution of Zionism to such «a painful dilemma». What are the basic features of the Zionist solution? Nordau calls for concluding a **deal** with the British so as to seize the opportunity and demand «unqualified ascendancy in the country». The Zionist obligation would be:

«**If** we Jews are ready to consolidate the British position in the Middle East, if we are ready to mount guard with England at the Suez Canal, and on the route to India, **and** to prevent foreign, hostile influences from obtaining pre-ponderance and coming into

conflict with the vital interest of the Empire, then we shall be doing England a service which commands material consideration»[85].

How are the Zionists to take possession of the land and demand that unqualified ascendancy in Palestine? Nordau lays emphasis on the following means for achieving Zionist predominance in the coveted country:

(a) «through our numbers»;

(b) «through our economic success»;

(c) «cultural and moral supremacy».

Failing to attain these goals would mean in Nordau's predictions, Jewish political incapacity which would make room for the escalation of «Arab rioting». That ultimately might oblige England to «give the narrowest interpretation to her declarations» and jeopardise the future of the Jewish national home in Palestine. Only thus can a return to the «status quo ante bellum» — when Palestine was still subject to Turkish rule — be avoided for good.

(85) See Max Nordau — «1920's Warning to 1947» in *The Jewish Standard*, December 26th, 1947.

It may be interesting to note here that this article containing extracts from Nordau's earlier articles and views was published soon after the United Nations General Assembly voted for the recommendation of the Partition Plan for Palestine.

How did Nordau envisage the Arab reaction to such Zionist cry for «Immediate Mass Immigration into Palestine?» There is only **one** way to deal with the Arabs: from a Zionist position of strength, no matter what Arab rights have to suffer. Nordau's prescription runs as follows:

1 — «The moment England gets the Mandate over the country we must have as many Jews in the land as there are Arabs. Otherwise Zionism is condemned to defeat».

2 — «There are **not several,** there are **not two,** there is only one single method overcoming this difficulty, (i.e. the Arab majority and opposition). We must by all means and with the utmost speed see to it that our numbers are equal to those of the Arabs in Palestine, and that we outnumber them as far as possible however small the difference may be at first»[86].

Nordau is of course counting on facing the Arabs overnight with a fait accompli. What really bothers him most, as it does bother all Zionists, is what he ironically calls the «irrefutable argument» with which «Arab agitators» against the Zionist intrusion seem to operate. According to this argument, the Arabs maintain: «We Arabs form the majority and have the

(86) *Ibid.*

right to decide here». No doubt Zionists cannot refute such an argument or defeat it on legal and human grounds. The best they can hope for is to go along with Nordau's programme and create the conditions he calls for. Nordau's miscalculation becomes noticeable when he declares that then «it is more than probable that the Arabs will very soon fundamentally change their position».

If Nordeau focused his attention on raising the numerical status of the Jews in Palestine to that of a majority, Israel Zangwill drew on Herzl's classical formula to make Palestine «as Jewish as England is English». His major concern became: how to get rid of more than **thirty thousand** Arab landowners and six hundred thousand Arab peasants who constitute the indigenous population of Palestine. In other words, how to evacuate the Arabs from their country under the pretext that they own the greater part of the «holy soil». He prescribes the Herzlian formula of **Expropriation,** but against «reasonable compensation» — whether they like it or not. A Jewish majority must be created by any means, and the displaced Arabs could always be resettled in the vast territories of the new Arab Kingdom. Palestine, according to Zangwill, can only become **«safe for Democracy»** in the sense of President Wilson, when the Jews «possess Palestine in the same way that the Arabs possess

Arabia or the Poles Poland»[87]. The joint Zionist British campaign to establish the Jewish National Home is the **«8th Crusade»** that should not meet with the failure of the previous seven crusades many centuries ago! Zangwill entertains hopes and expectations, whereby a Hebrew Jerusalem, regained and restored, could become the future seat of the League of Nations. Nevertheless, he does not allow in his speculations for a possibility of this kind: self-determination rights for the Arabs of Palestine is the **only** just means to make that country «safe for democracy» — in President Wilson's sense.

D. Minority Precedes Majority

In 1929 the Palestine Arabs were obliged once more in the face of Zionist violations and machinations to assert their majority rights and give vent to their basic refusal of the Mandate and its national home policy. Fearing that Britain could be persuaded to modify its policy, the Zionists recruited the famous physicist, Professor Albert Einstein, for propaganda purposes, and in order to win over British public opinion to their side. What might have bothered them most at the time were the unfavorable commentaries in the British Press on their role in the recent riots. Therefore, Einstein was persuaded to render a service by addressing a letter in the «Manchester Guardian»

(87) See Israel Zangwill — *Speeches, Articles and Letters,* selected and edited by Maurice Simon, (London, 1937), p. 340.

to British Public Opinion under this heading: «What Jews Expect of England». He wrote:

«Zionism, it must be understood, is not a movement inspired by chauvinism. I am convinced that the great majority of Jews would refuse to support a movement of that kind. **Nor does Zionism aspire to divest any one in Palestine** of any rights or possessions he may enjoy. **The Zionist** Movement is **entitled**, in the name of its higher objectives and on the strength of the support which has been promised to it most solemnly by the civilized world, **to demand** that its unprecedented reconstruction effort... shall not be defeated by a small clique of agitators, even if they wear the garb of ministers of the Islamic religion»(88).

Nevertheless, professor Einstein told British Public opinion that «the Jews do not wish to live in the land of their fathers under the protection of British bayonets». In a conciliatory note and tone they would rather come to Palestine «as friends of the kindred Arab nation». Britain is called upon, however, to sponsor those friendly relations between native Arabs and Jewish colonists, and to put an end to all «poisonous propaganda» presumably spread by «a small clique of agitators» and also to provide ample protection and security for the Zionist colonization work. But Professor Einstein was contended with his «idea-

(88) Reprinted in *The New Palestine*, Vol. XVII, No. 7, October 1929, p. 270.

lization» of Zionism and its sublime, lofty aims. There was no need for him to examine any Zionist infringement upon the rights of the Arab majority.

This task was nonetheless undertaken by another prominent Zionist leader. Dr. Shmarya Levin must have felt uneasy in good Zionist faith about the «question of the Arab majority and the Jewish minority in the country». The title of his article betrays a great deal of what he purports to say: «Minority and Majority — An Examination of a False Claim Based on a Misunderstanding».

Without having to go into the intricate and pedantic details of his argumentation, it could perhaps be summarized in the following manner:

(a) The Great Powers have recognized the justice of «our claim» to a National Home in Palestine.

(b) This recognition springs from a general outlook to the national problem — namely, the principle of nationality, proclaimed by the world powers officially as «the principle of national self-determination **without exception**».

(c) The Jewish people, a nation of 16 million souls, falls outside the scope of the natural formula, where land and people form a

unity. The Jewish problem is a **sui generis**, unique because it pertains to a people living in exile. Hence, the principle of national self-determination should also apply to them.

(d) The historic relationship between the Jewish people and Palestine has been solemnly recognized by the Balfour Declaration, endorsed by the Great Powers, sanctioned by the League of Nations and «by the legitimate representatives of the Arab people».

(e) Those who raise the question of equal Arab eligibility for the right of national self-determination in Palestine argue from a «seemingly quite simple» position:

«The Arabs are a large majority in Palestine. The principle of self-determination has been accepted. **Therefore,** Palestine belongs to the Arabs.

(f) Such an argument is guilty of sophistry, according to Levin, since its advocates fail to draw a dividing line between a nation and a **national group,** thereby confusing the rights applying to each. Furthermore, it is «basically dishonest». Why?

(g) The honest interpretation grants every **nation** the right to a national homeland, but certainly «not every little **national group**». The latter can lay claims only to certain

«rights of autonomy» and national-cultural independence, but **not** political independence.

(h) Now, applying this standard («the **only possible** and the **only just** standard») to Palestine, and bearing in mind that aspiring to two national homes constitutes a luxury, we are supposed to arrive with Levin at this conclusion: «The Arabs as a nation have received more than is properly their share». With two Arab states in Mesopotamia and the Hedjaz, the Arab nation would be acting against reasonableness in demanding for a **third** Arab state. After all, «the Arabs of Palestine are a **branch** of the Arab people», i.e. they constitute only a **national** group in Levin's terminology.

(i) The turning-point in the argument could be expressed in Levin's own words accordingly:

«The **fact** that the Jewish population of Palestine is at present a minority has nothing to do with the case.

«The Balfour Declaration was given not to the Jewish population of Palestine, but to the entire Jewish people».

«The Arab group in Palestine... must formulate (any moral claims it desires to make) as follows: not the claim of 600,000

against 16,000, **but** the claim of 600,000 against 16 million».

«The overwhelming majority claim is still with the Jewish **nation,** as contrasted with the Arab **group** in Palestine»[89].

Of course, Levin's argument stands or falls depending upon his contention that the Arabs as a nation have received more than is properly their share. The question remains as to why shouldn't the Arab nation be contrasted with the 16 million Jews in the world. What if the **Arab group** in Palestine desires to exercise its right to self-determination? According to Levin, this group is not entitled to claim such a right. He prefers to dismiss the whole issue by saying:

«The Arab group in Palestine has only the right to demand that the creation of a Jewish National Home in Palestine shall not prejudice or injure its economic and spiritual development; and this has been solemnly guaranteed to it within the body of the Balfour Declaration itself».

In other words, the Balfour Declaration has given the Palestine Arabs their due, thus leaving nothing to be desired on their part.

If they are to ask for more than what has been properly alloted to them, the Zionists can only consider them under the aspect of «those falling under

(89) *Op cit.*, pp. 271-2.

the spell of agitator and fanatics». To talk about «national rights», «national oppression», of «suppressed aspirations» or «the right to (Arab) self-determination» is only to utter terms which have a propaganda value appealing to the Western world. Whereas the West ought to know better that «there is no national passion thwarted» among the Arabs[90]. Simple every-day Arabs in Palestine, according to this view, have no ill feelings towards the Jews. They happen to be at the mercy of agitators and hooligans. The poor Arabs have become aware of the fact that the whole issue boils down to «dynastic and family struggles among the wealthy», struggles which will cause the ruin of the common folk and make them pay the price.

Another view expressed by a Christian Zionist observing Palestine legislates the following expectation: «Palestine Arabs are bound to follow the example of Syrian Arabs, who are unconcerned with Palestine politics and merely demand that trade go on and the Holy Places be secured»[91].

The Arabs of Palestine are also observed from this angle: «The army of idlers, baksheesh artists and parasite coffee-house gossips are mainly responsible

(90) See Maurice Samuel — «Foundations of Peace: The Solution of the Arab Problem Must Be on the Level of Zionist Idealism», *op. cit.*, p. 273.

(91) See Pierre van Paassen — «A Christian Observes Palestine», *op. cit.*, p. 285.

for the existing jumpy and nervous atmosphere...» **(Ibid.)** The overwhelming majority of the Palestine Arabs are ignorant of what others talk about in their name. Therefore, western sympathies for so called Arab aspirations and national rights are completely out of place. Why?

«The mass of the Arabs — say, 95% — would simply not understand what the Western world is talking about in their name. And the Western world just does not know how exclusively the Arabs have been influenced by lying statements (one cannot even dignify them with the name of propaganda) about the Mosque (of Omar), the Wailing Wall and the religious aggressiveness of the Jews»[92].

It would appear that the Zionists are the only people who enjoy the privilege of understanding the Arabs and their demands. Whether those «lying statements» of 1929 have remained so in 1968 might perhaps cause embarrassement to the professed Zionist idealism for the sake of Western consumption?! What the Zionists are after in launching such prefabricated views of Arab aspirations and misguidedness does certainly reflect on the attitude they adopt towards Arab human rights.

Zionism was bothered by the question of an Arab majority being subjected to the dictates of a Jewish minority determined to assert its own rights only,

(92) Maurice Samuel, *op. cit.*, p. 274.

by denying any legitimate rights to the native Arabs, only in so far as this «legal and moral flaw» could be used to discredit Zionist idealism in the eyes of Western sympathizers. What they introduced and developed in the country since the early thirties was intended to consolidate the economic penetration of Palestine and give Jewish colonization work a firm foundation. It is enough within this context to point out to the policy of exclusiveness and «party» followed by Zionist agencies and official bodies to secure a firm grip of the country's economic life. The two concepts of **Avoda Ivrit** (Hebrew Labour) and **Tozeret Ivrit** (Hebrew Product) are but one illustration of the policy of discrimination practised since then. No doubt such a policy cannot be exempted from chauvinistic motives and discriminatory considerations amounting to a Zionist version of Apartheid.

There is every clear indication that Zionism could afford to make real attempt to reach an understanding with the Arab majority in Palestine, or to recognize the national aspirations of the Arabs. True, Zionist congresses all throughout the 1920's and 1930's continued to pay the traditional lip service to mutual good-will and cooperation between Arabs and Jews. The accusation made in August 1939 by a prominent advocate of Arab-Jewish rapprochement, Haim Kalvariski, constitutes ample evidence to this effect. The accuser charged Zionist leaders with misleading the public on two important matters:

(a) «the conception that it is not necessary to take into account the oppositions of the Arabs»;

(b) the Zionist contention that, «in the solution of the Palestine problem England is the decisive factor».

Kalvariski went on to criticise both the Jewish Agency and the Revisionists in the following manner: He said, they:

«Expend all their ... energy in winning the sympathy of this or that Minister ... and are very little concerned with winning the sympathy of the people who are as interested in this problem as we are... If only we had invested one-tenth or even one twentieth of the resources that we have sunk into securing the sympathy of remote nations and individuals... into winning the sympathy of the (Arab) nation... by creating economic, political, moral and cultural ties... then our present position both in Palestine and in Europe would have been quite different»[93].

But Zionism devoted its effort and energy to the usurpation of Palestine and the armed violation of Arab rights instead. The Zionist search for a Majority and land ownership ended up by the proclamation

(93) From «Our Policy after the White Paper» (Tel Aviv, 1939), quoted by Rony Gabbay: *A Political Study of the Arab Jewish Conflict,* (Geneve — Paris, 1959), p. 33.

of the state of Israel and the occupation of Arab territories after launching a mass Arab Exodus from Palestine to the neighboring countries.

THE LEGITIMACY OF RESISTANCE, AND HUMAN RIGHTS IN THE OCCUPIED TERRITORY

By Dr. EZZELDIN FODA

The nature of wars has become different and the concept of war has underwent a change in modern times. War is no longer a legal state (situation de droit) irrespective of its actual existence as a material state of affairs (situation de fait), as the case used to be in the age of the rise of international law following the Peace of Westphalie in 1648. International circumstances then — in the age that witnessed the rise of the nation-state, the appearance and triumph of capitalism, the splendor of state sovereignty and the organization of international relations on the basis of a traditional balance of power between states — have called for a justification of war as a characteristic feature of modern state sovereignty and as an indispensable means for the execution of national policy at the expense of other states and groups. Hence, the idea of the «just war» that justifies the existence of any state of material warfare as long as its causes and aims agree with the teachings of the Church, was no longer accepted by Royal thrones and men of colonialist ambitions. The creation of a state of war has become subject to the sovereign will of States and in accordance with the rights to sovereignty. A state of war has to imply certain legal provisions and conditions that qualify it for a legal war, i.e. a war that commences or ends

under International Law, not a mere state of armed hostilities[1].

When the sovereign states embarked upon the task of writing down some of the principles of the Law of War they did not aim, under any circumstances whatsoever, at a denunciation and condemnation of war, or at a prohibition of war as such. What they did instead was to collect and commit to writing some principles already established in international usage as customary, and dictated by considerations of international ethics, religious teachings and public human conscience, the purpose being to organize hostilities and war operations, and to diminish the sufferings of humanity from the evils of wars.

On this basis, conventional international Law regulated the State of War and the conditions for applying the law of war to such a state in the light of the following considerations:

1 — That it be a war between states, whereby open armed hostilities and fighting occur between the regular armies of two or more states.

This does not mean that traditional jusrisprudence

(1) What this amounts to, in other words, is the existence of a legal state of war without military activity on either side, or the existence of actual hostilities. It also means that a state may resort to the use of armed force against another without a legal state of war maintaining. See: Lord McNair — *The Legal Efects of War,* 1966, pp. 2-6.

(Grotins, Zouche, Pufendorf, Vattel) did not know other kinds of armed hostilities falling outside the scope of legal war. Side by side with legal wars, there always arose other kinds of fighting and belligerence called «Rebellion», «Insurrection», «Revolution» and «Civil War». All of these taken together are of one nature in so far as they denote a struggle between the state as a person and parts of its subjects. But such kinds of hostility do not bear, under International Law, the attribute of Public War between Sovereign States. In spite of that, traditional International Law has recognized the phenomenon of civil war, as a result of the recognition willfully accorded by States to the rights of belligerents in those revolutions bound by rules and customs of war(2).

2 — That there be a declaration of a state of war and an issuing of an explicit warning to that effect (Ultimatum) on the part of the State that wishes to absolve itself from the condition of peace existing between it and the other State or States. These latter

(2) Grotins has named such kinds of hostilities as «mixed wars» («Guerres mixtes») arising between the state and its subjects. Dufendorf called them wars that exist within the one society. De Martens has described them as wars conducted between members of the one State. Calvo gave such wars the name of «struggle» between citizens inside the one state. Lastly, E. de Vattel said: «When a nation is split against itself, divided into 2 opposing parts, with each one of them resorting to arms, this is civil war».

«entities» have no choice in such a case but to respond to this hostile desire and take the stand of self-defense[3]. On this basis, constitutional Jurisprudence in the Anglo-Saxon countries (the U.S. in particular) has refused to consider any state of hostilities not preceeded by a declaration of war as a legally existing state of war. It is for such a purpose that the Third Hague Convention of 1907 stipulated for the High Contracting Parties the necessity of issuing a warning of war in the form of an ultimatum containing a «conditional but definite threat».

However, international jurisprudence has achieved much development in this respect, in taking into consideration the fact that a mere recognition on the part of one belligerent side of an existing state of war with the other side, is in itself an expression of this existing state of war. Failure to meet the obligation stipulated in the Convention of 1907, i.e. failure to issue the necessary Ultimatum, constitutes only a violation of this international obligation on the part of the High contracting parties[4].

3 — Lastly, war under traditional international

(3) Julius Stone — *Legal Controls of International Conflicts*, (London, Stevens, 1954), p. 305. Such was the case witnessed in the Spanish Civil War and the Korean War, inspite of the United Nations' non-recognition for the government of North Korea. That also applies to the Algerian war of liberation.

(4) *Ibid.* See also Mc Nair, *op. cit.*, p. 7.

law is not a state of actual or material armed hostility calling for the application of Laws and Regulations of War irrespective of conditions for commencing open hostilities, or persons of the belligerent parties. It is rather a legal state arising out of certain existant conditions that qualify an actual state of affairs, for a «State of war under International Law», and hence require the implementation of international customs and regulations in the conduct of war and for diminishing the evils of war.

It goes without saying that this traditional theory of the concept of war and the protection of mankind in war has impaired, by its nature, the appropriation of modern developments in international relations and the occurrent wars of national liberation, without taking into consideration these constitutional developments resulting from the rights of peoples to self-determination and rights of individuals to protect their basic liberties.

In its definition of «legal wars» and the distinctions drawn between these wars and various other kinds of armed hostility and belligerence, the traditional theory has fallen short of according protection to wars possessing no international character, and to armed hostilities that break out within the domain of the one State or between militant Revolutionaries and the regular armies of the Strife-torn State (Such

(5) Mc Nair, *op. cit.*, pp. 7-8.

as the case is in Vietnam, the Congo and North of Iraq). More important still, that same theory stood as an obstacle against the resort to armed force through means other than international war for the sake of self-defence (self-help) on the part of small peoples and states(6).

Furthermore, the content of such a theory can no longer give legitimacy to an international war as a means for executing national policies of States, since the Pact of Paris (the Kellog-Briand Pact of 1928) and the Charter of the United Nations Organization (1945). This latter Charter stipulated clearly and explicity the prohibition of «the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations (Article 2 paragraph 4). Chapter VI of the Charter has provided for pacific settlements of disputes through such means as «negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice». (Art. 33).

(6) Note in this respect the attitude of small states at the Hague Conference of 1899, and their insistence upon permitting all kinds and means of self-defense other than resorting to regular armies.

See: W.J. Ford — «Resistance Movements in Occupied Territory», — *Netherlands International Law Review*, (Oct. 1956), p. 355.

If the U.N. Charter was clear and explicit in prohibiting international wars and the non-recognition of any territorial gains resulting from such wars and claimed in the name of a legitimate war, or the right of conquest under traditional international law, it has also provided for other kinds of wars or warlike actions arising to deter aggression and denounce it by means of a collective system for the maintenance or restoration of international peace and security (Chapter VII of the Charter). According to Article 51 of the U.N. Charter, «Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security».

Clearly then, when modern international law prohibits the use of armed forces or the threat of force in international wars and disputes, and when it permits the resort to armed force for the sake of self-defense, i.e. the «just war of self-defense», this law purports to recognize the existence of a new situation created by the practical necessity of international life and channeled towards a new position that combines the two traditional states of **war** and **peace.** The phenomenon of revolutionary wars, such as wars of liberation and movements of national resistance conducted on the part of the occupied people for the sake of self-determination, or for detering an act of aggression committed by forces

of occupation in wars of a criminal character, can thus occupy the same legal status enjoyed by wars of self-defense(7).

This attitude has had the support of small states since the time of those first attempts to write down the regulation concerning the Laws and Customs of War in the Brussels Conference on War-Law (1874), and in the first Hague Conference of 1899. In the face of Big States' insistence upon retaining freedom of political action and imperialist expansion, and upon legalizing the purely armed conflict by means of regular armies only, there arose resistance on the part of the small states participating in those Conferences and refusal to limit the concept of a legal war to this single form or kind of armed hostilities. Hence, small member-state were determined to have national resistance included within the scope of legal wars and protected under the law of war. Disagreement between the participants reached such a degree of tension that it threatened the Conference with failure and collapse. A declaration was then issued to the effect that, the rules and usages of war as appearing in the conventions drafted by this Conference, do not cover all the circumstances which arise in practice, nor do they intend that «unforseen cases should be left to the arbitrary judgment of military

(7) Metin Tomboc — *International Civil War* (Ankara, 1967), pp. 67-87.

commandes». In other words, self-defense was tacitly recognized as a just means[8].

It is a known fact that the Rules respecting the Law of war and its Regulations, as they have been written down in the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1924, and the Geneva Conventions of 1949, constitute a set of principles that reveals some of the rules established in international practice and usage. But they do not constitute a universal or comprehensive limitation on the inhuman means of using wars and arms[9]. The Hague

(8) Ford — *op. cit.*, p. 35.

(9) These early conventions (The two Hague Conventions of 1829 and 1907) are especially noted with respect to protection of belligerents in a war that breaks out in a legal State under customary international law. Both conventions have provided for the following:

1 — «The right of belligerents to adopt means of injuring the enemy is not unlimited» (Article 22 of the 2nd Hague Convention, 1899 and of the «Hague Convention 1907).

2 — Prohibition «to employ poison or poisoned arms», and «to kill or wound treacherously individuals belonging to the hostile nation or army» (Article 23).

3 — «The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited». (Article 25, 4th Hague Convention of 1907).

4 — «The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings, is forbidden» (Article 1 of the 9th Hague Convention, 1907).

Conferences were especially convened to deal with limiting the kinds of arms used in wars and to appropriate the peaceful means for settling disputes, but not to write down every kind of principle or usage established by humanity as far as prohibiting the inhuman use of arms or the resort to various kinds of armed hostilities. Both Conventions that of 1899 and 1907, did provide for this. The Preamble of the 4th Hague Convention (1907), for instance, stated the following:

5 — Pillage,plunder and hostages are formally forbidden even when a town or place are taken by assault. (Article 28 of the 2nd Hague Convention, 1899 and Article 47 in the 4th Hague Convention, 1907, and Article 7 of the 9th Hague Convention, 1907).

6 — «A Belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense». (Article 44 of the 4th Hague Convention of 1907).

7 — «No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible». (Articles 50 of the 2nd Hague Convention, 1899 and 4th Hague Convention of 1907).

8 — The statement issued by the Hague Conference of 1899 has prohibited the use of poisonous gases.

9 — The Geneva Protocol of June 17, 1925, «prohibiting the use in war of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare».

«Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience»(10).

The Geneva Protocol of 1924 indicates that acts contrary to the public conscience of the civlized world are no doubt committed against international law. Furthermore, what is prohibited by provisions of the Protocol, should become the accepted and established principle of international law on a world-scale, as long as such principles are sanctioned by the public conscience and international practice.

Should there be any more need, in view of what has already been said, for further discussion on the essence and nature of war, in that it is a war calling

(10) The General Assembly of the United Nations called on all States, in its recommendation N& 2161 (521) of 5 december 1966, to observe the principles and aims stipulated in the Geneva Protocol of 1925, to condemn any violation of these principles, as well as to the necessity of becoming signatories to this Protocol.

See: *Bulletin de la Commission Internationale de Juristes* (Sept. 1968), pp. 5-6.

for compliance with the laws intended to diminish its human evils?. Does a Declaration of War on the part of one State against another constitute a basic condition for abiding by those conventions? Or, does the mere existence of armed hostilities, actual or material between two organized and regular belligerent forces, lead automatically to an implementation of the above mentioned rules commensurate with the degree and extent attained by hostile operations?[11].

In the light of these considerations revealing the humane character and objective of the legal rules mentioned in the special conventions on the law of war, and in the light of the prescriptive (normative), not constructive (descriptive) nature of these rules, and in view of the necessity of going back to what has been established by international usage and accepted by the public conscience — in any case not provided for in the aforementioned conventions, it could be said that the distinction between an international and a limited (localized) war is no longer relevant to the scope of applying these conventions whatsoever[12]. Perhaps this distinction has become so thin, that it only pertains at present to an extension of the scope or «locale» of war in both cases, and to be extent of applying the rules of international public law to them. Should these rules be

(11) This provision is known as «de Martens Provisions».

(12) *Bulletin, op. cit.,* p. 7.

complied with from the commencement of open hostilities, such as the case is in international wars where no change occurs in the person of the two belligerent states? Or, does the application of these rules change, following the stages in the process of rise and development of the international character and pending upon the extension of war operations necessary for its recognition as such?[13].

But is it logically possible to maintain that in all these stages and conditions a state of actual, material war ought not come under a regulation provided by the law of war which intends to diminish the human evils of warfare? Or, do all inhumane acts, immoral and contrary to civilized custom, become legalized and permissible in this case? Is it allowed under modern international law for a state to seek refuge in the law of war in order to exercise the right to international war in the traditional concept of war, whereas the U.N. Charter prohibits the threat or use of force? In such a case, the United Nations cannot stand still, by virtue of its Charter. Rather it has an obligation to apply such measures as «complete or partial interruption of economic relations and of rail,

(13) See on this subject: Jean Siotis — *Le Droit de la Guerre et les Conflits armés de caractère non international,* (Paris 1968), pp. 21-22.

Siotis writes: «Le seul élement qui les différencie est d'une nature quatitative, le degré d'application du droit de la guerre».

sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations», up to military intervention by armed forces of Members of the U.N. against that state or party failing to comply with measures decided upon by the Security Council. Does not this in itself mean that, when the World Organization embarks upon intervention in order to prevent an aggravation of a situation likely to endanger the maintenance of international peace and security, it would be only exercising the right of the international community to prevent or denounce any open armed hostilities of whatever degree, scope and duration (See Articles 34, 41 and 42 of the U.N. Charter)[14].

(14) Customary International Law refuses to recognize rebels as «an organized political entity» (Stage of Civil War) before acknowledging their rights of belligerents. These are the rebels belonging to militia groups, resistance movements or volunter corps. They have to fulfil the following requirements:

a — «that of being commanded by a person responsible for his subordinates,

b — that of having a fixed distinctive sign recognizable at a distance,

c — that of carrying arms openly,

d — that of conducting their operations in accordance with the laws and customs of war».

e — continuance of armed hostilities for a sufficiently reasonable period of time.

What is the rule of a war conducted by the United Nations in this case, either as a police action or as an act of suppression required by collective security? Or what is the rule of a war permitted and regulated under the Charter of the World Organization for the sake of self-defense? Do not the Law and principles of humane war as stipulated in the Hague and Geneva Conventions apply to this war, too? Modern international law has prohibited the resort to an international war in order to score territorial gains against the territorial integrity or political independence of any state, whereas it has permitted other kinds of wars such as wars of a non-international character (local wars), of such a nature and objectives that place them outside the scope of wars legalized by traditional law. It follows then, that modern International law provides for applying the Law and Regulations of War as a means of defense against the inhuman use of war devices and tools in the latter kind of non-international (local) wars. To mainatin the contrary means that we still subscribe to the position of traditional jurisprudence where a link is posited between international war as a «legal state»,

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See: A. Rolin — *Le Droit Moderne de la Guerre,* 1920
W. L. Walker — *Recognition of Belligerency and Grant of Belligerent Rights*
Lothar Kotssch — *The concept of war in Contemporary History and International Law,* (Genève, 1956).

but not legalized yet, and the application of the law of war. Or else, we take an opposing and radical stand with respect to developing the law of war and extending the efforts to diminish the evils of war on the basis of prohibiting the right to wage war and negating its afore mentioned objectives, bearing in mind at the same time that there do exist other kinds of non-international wars and of armed hostilities in general.

International public Law in its modern development does not condemn those other kinds of war regulated by the U.N. Charter, and those armed hostilities that develop within the social body of the one State into a civil war, where rights of belligerents are recognized and also their right to apply the laws and customs of humane war to themselves.

Furthermore, where traditional law has embarked upon reorganizing the rules of war and committing some of its usages and customs to writing, the intention was not to justify or prohibit war as such, but rather to prohibit certain acts contrary to humane practice. It should be absurd to maintain that such rules apply only to those acts considered in the past as having been committed under law, whereas the same rules should not apply to those acts committed in the Post World War II period, in view of that movement on a world-scale towards liberation in the colonies, and deemed legal and legitimate under the U.N. Charter.

The Law and Regulations of war for the sake of diminishing its human evils still stand, and are in constant need of development and modification, as long as acts of social and collective violence do exist in international relations. Also as long as there do exist western schools and opinions of jurisprudence that still consider those provisions of the U.N. Charter prohibiting the threat or use of force to mean war in its old traditional concept, and not any act of violence or force that falls short of international, open, armed force, such as reprisals or acts in retaliation, naval blockade, acts of sabotage and preventive wars.

All this is extremely important in limiting the scope of our discussion with respect to the necessary application of international written conventions on the laws regulating wars and aiming at diminishing the evils of war, and the inherent basic rights of peoples and individuals (These rights are much more older and deep-rooted in the history of mankind than those laid-down human rights in the legal grab that is called for at present in constitutions and international agreements) to those armed hostilities of a non-conventional international character, especially with respect to the law governing acts of occupying territories and acts of national resistance. It goes without saying that a great number of these rights and freedoms mentioned in the Universal Declaration ofHuman Rights (1948), and in the two political,

social and economic conventions open for signature during this present year of human rights, have been included in the Four Geneva Conventions of 1949 relative to the Protection of war victims and considered as complementing the two Hague Conventions of 1899 and 1907 with respect to war on land and at sea.

International Conventions and Agreements concerning the protection of human rights make it a point to stipulate the right of States party to them to take those measures that run contrary to their obligations in safeguarding the rights of the individual within those limits required by war circumstances or other considerations of internal conflict threatening the nation (Article 15 of the European convention for the Protection of Human Rights and Fundamental Freedoms, Article 4 of the Draft International Convention on Civil and Political Rights). Such stipulations must then include within their jurisdiction, in order to guarantee such rights for peoples and individuals, those conventions regulating the law of war relevant to the protection of war victims and belligerent parties. This inclusion applies particularly to the Geneva Conventions of 1949[15].

It is worth mentioning in this context that the Geneva Conventions have discarded the concept of war in traditional jurisprudence as a legal state

(15) Siotis, *op. cit.*, p. 20.

subject to conditions, and adopted instead the concept of Actual War as defined by the outbreak of armed hostilities in a battlefield («locale»), not necessarily conducted by belligerent parties that have to be States aiming at executing Their policy to the detriment of one another[16].

Article 2 of the «Geneva Convention on the Protection of Civilian Persons in Time of War (12 August, 1949) stipulated the following:

«In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

«The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

«Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be

(16) Dietrich Sschindler — «*Das Humänitare in Rahmen der Internationalem Garantie der Menschem*». *(International Round Table Discussion of Human Rights)* (Berlin 1966) pp. 40-50.

bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof».

Article 3 provided for the following:

«In the case of armed conflict not of an international character occuring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed **hors de combat** by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria.

«To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) taking of hostages;

c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict».

«The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention».

«The application of the preceding provisions shall not affect the legal status of the Parties to the conflict».

As a matter of fact, some writers on the subject have interpreted the phrase: «armed conflict not an international character» (as stated by the Geneva Convention relating to implementation of the Law of War on the belligerents) as being a state of civil war following the recognition of belligerents' rights accorded to revolutionaries. This opinion is no longer part of any respected trend of thought in modern

international law. Hence, it is no longer maintained that the law to be implemented in the case of revolutionaries or rebels during the phase of pre-recognition of belligerents' rights, is no other than the internal penal code of the existing authority inside the State that is divided against itself and torn by dissention and insurrection. But modern interpreters on the whole, and especially in Anglo-Saxon jurisprudence, tend to favor the opinion that as soon as a revolution breaks out and revolutionaries declare themselves hositle to the existing authority and in rebellion against it, it becomes necessary to apply the international rules of the Law of war **(Jus in bello)**, even to a limited degree. The more a revolution extends in scope and the more the hostilities spread, the scope of applying the Law of War should be extended accordingly. In one way, the issue depends upon the material or concrete quantitative development of events. The international character of revolutionaries follows the trail of such development. The scope of applying international public law is extended respectively, so as to include all aspects of the conflict: in its transition from a conflict or hostility of no international character to one between two entities possessed by an internationally recognized belligerent status. Or, until such a time comes for the «extinction» of one belligerent party politically and legally — **either** the revolution triumphs and replaces the old government, **or** it is crushed and thereby the legal character and status of the revolutionaries

disappear[17].

In view of this, it appears that there is no room for the distinction between succeeding or different stages of the course taken by a revolution, i.e., its transition from the stage of **rebellion** or **insurgence,** to that of **revolution** followed by a **civil war.** These are stages of quantitative, not qualitative nature. During these satges, the international character develops concurrently with the developing hostile operations, their extended scope and duration. Such different names are mere variations expressing one single character of an actual and concrete state, where revolutionary activity develops under criteria that differ in political but not legal thought.

Since traditional international law has not really provided us with any definite criteria for distinguishing between stages of conflict prior to civil war with no international character, and between civil war as one kind of conflict, it becomes extremely difficult to distinguish between them on the basis of protection or non-protection under the law of war

(17) Kotssch defines actual war as «Material War implies a continuous dash of arms conducted by organized armies which engage the responsibility of Government. It does not presume the conditions that the belligerents must be States. The existence of war in the Material sense is something to be judged by evidence not of intentions, but of activities of military forces in the field». *Op. cit.,* p. 56.

which in turn, is a law aiming at one goal in all of these cases.

If such is the case of an internal armed conflict raging between a government and its subjects, then the armed conflict that rages between men of the resistance and force of occupation primarily calls for applying the law of war to regulate resistance operations and protect its men from dangers. In cases of territories coming wholly or partially under occupation, sovereignty still belongs to the legitimate State. A provisional status of occupation does not entail any change in the relation between the legitimate state and its sovereign rights over the said territory. Furthermore, the occupant has no legitimation of authority, from the legal point of view, to alter the international status of the occupied territory, through annexation, partition, alteration of judicial laws in force of the country, or intervention in the daily life of inhabitants of the territory occupied, unless he intervenes within the narrowest limits that guarantee security for his forces and accord protection to his military operations. The occupied State continues legally to exercise «territorial concern» over the occupied territory, no matter how long the occupation endures, inspite of the fact that its exercise of authority or «concern» has been actually obstructed or suspended by the emergence of another actual status when the territory was occupied by military forces of the hostile army.

What this amounts to, is that the emergence of a certain situation whereby the territory has fallen to a hostile army or passed under its control and authority, does not mean a negation of the national character of the said territory. Nor does it entail an absence of loyalty and allegiance on the part of its inhabitants to their country and legitimate State. A territory actually placed under the occupation of a hostile army is not supposed to turn into a hostile territory, or that its inhabitants become hostile to their fellow countrymen, families, kinship and State. In this respect the judgment pronounced by the prizes Court in the Gerasimo Case on April 2, 1857 stated the following:

«It is inconceivable, no matter how long this occupation has to endure, that Moldavia should become part of Russia, or that its inhabitants should become enemies of those who are fighting Russia. The most that could be reached is the temporary interruption of the High Porte's Sovereignty and a temporary assumption of Russian authority. But the national character of this territory remains unaltered and unchanged, as it used to be. Any attempt to the contrary of this principle, on the part of Russia, will be met with refusal»[18].

Since the authority exercised by forces of occupation is based on a «de facto» situation and an actual state of affairs, and not on grounds of exercising

(18) Siotis, *op. cit.*, pp. 21-23.

powers of legal sovereignty, occupation authorities usually resort to exemplary punishment (maltreatment and torture) of occupied inhabitants, compelling them to obedience and swearing allegiance. The occupant forces them to disclose secrets and furnish information about their fellow-citizens or military forces. Then, those inhabitants have no choice but to resist occupants and carry arms against them. An authority established on force rather than law, as is the case of occupation authorities in general, can only be resisted by force. The inhabitants have, under these conditions, to organize themselves into movements of armed national resistance, as the only unavoidable legitimate means under international public law for self-defense, protection of property and maintenance of the status of affairs where the transfer of authority does not lead to insurance of any legislative measures on the part of occupation forces in the form of **orders-in-council**. These orders do not assume the character of laws pertaining to the original State whose territory has passed under occupation, but only aggravate the provocative nature of occupation and call the occupied people to arms. For the purpose of illustration, not exhaustion, one could cite the measures resorted to by Israeli authorities in the occupied territories, such as the annexation of the Holy City of Jerusalem, changing school curriculae and educational programs, altering judicial procedures, demolishing houses and buildings, evacuating the population and expelling inhabitants,

and acquiring lands, etc... All said measures which run contrary to the general rules to be duly applied under temporary cases of complete or partial occupation, and as stipulated in the articles of the Geneva Convention for the protection of civilian inhabitants[19].

An important domain of international jurisprudence has concerned itself with the question of justifying people's resistance to occupation authorities and determining its legitimacy, to the same extent that it has called for applying laws of war and humanitarian rules respecting the attempts to diminish the evils of war suffered by members of resistance forces apart from the treatment accorded to members of regular armed forces. Resistance to occupation authorities means resisting the occupation as an illegal presence resulting from an invasion of the occupied territory contrary to International law that prohibits such a kind of territorial war conducted for the sake of scoring political or territorial gains. Whereas civilians inhabitants become free to defend themselves and their country against the invaders by resorting to all possible means, forces of occupation remain bound to follow war rules and customs with respect to the treatment of the civilian population and prisoner members of the Resistance[20]. Of

(19) See, for instance, the following articles in the agreement dated 12 August 1949: 2, 27, 32, 47 and 49.

(20) E. S. Poscoe — *Reports of Prize Cases:* 1745 — 1859, Vol. II (London, 1905), pp. 584 - 590.

relevance to this, is the decision made by the Polish Supreme Cour in the «Greiser Case», to the effect that:

a) Acts considered legitimate under international law make it impossible for Polish Court, to pronounce penal judgments against those committing them.

b) A war of aggression cannot be justified under International Law.

c) Acts committed by occupation authorities are considered illegal acts, as long as the occupation resulting from a war launched contrary to international law is an illegitimate occupation.

Finally, the legitimation of resistance acts on the part of inhabitants of occupied territories is based upon the temporary nature of occupation and the allegiance of the inhabitants to their former state. As long as forces of occupation exercise more «de facto» authority, and not «de jure», the inhabitants' obligation to obey belongs to the original state as bearer of legal sovereignty. This original State has the right to punish individuals who squander their allegiance to it, as soon as it resumes the actuel exercise of its authority upon the termination of occupation, and as long as no agreement to the contrary has been reached in a peace treaty whereby the State of origin renounces the territory to the

occupant State. Hence, «there is no obligation, moral or legal, on the part of inhabitants of occupied territory towards the occupant State and forces of occupation; so much so that secret resistance against the enemy in the occupied territory becomes a legitimate and permitted kind of war»[21].

There is nothing under international public law to impair the inhabitants of occupied territories from resorting to acts of national resistance against the occupant. There is also nothing to prevent, but rather everything calls for implementation of rules of the Law of war and for diminishing the human evils of war on the inhabitants of occupied territories, whether occupation is met by resistance or not. (Article 2 of the Geneva Convention on the Protection of Civilian persons).

Finally, there is nothing to prevent, but rather everything calls for treating members of the national resistance forces as prisoners of war. Article

(21) An opinion voiced by the Prosecution in the Hostages Case before the American Military Tribunal V. See Folk. *Op. cit.*, pp. 357.

The Dutch Jurist G. Sawicki is of the same opinion and trend. See his article «Châtiment ou encouragement?» *Revue du Droit International,* (Sottele) 1948, N° 3, pp. 240 ss. See also the article of the Soviet Jurist, I.P. Trainin — «Questions of Guerilla Warfare in the Law of War». *American Journal of International Law,* 1946, pp. 534 ss.

4 of the Geneva Convention, relative to the Treatment of Prisoners of War (August 12, 1949), stipulates that «prisoners of war, in the sense of the present Convention, who have fallen into the power of the enemy, belong to one of the following categories:

«Members of other militias and members of other volunter corps, including those of organized resistance movements, **belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied**, provided that such militias or volunter corps, including such organized resistance movements, fulfil the following conditions:

a) that of being commanded by a person responsible for his subordinates;

b) that of having a fixed distinctive sign recognizable at a distance;

c) that of carrying arms openly;

d) that of conducting their operations in accordance with the laws and customs of war»[22].

(22) Ruling of the Hague Special Tribunal on May 4, 1948 on the case of «Höhere SS — und Polizeifuhrer», See Folk — *Op. cit.*, p. 366.

THE LEGAL STATUS OF THE ARAB RESISTANCE IN OCCUPIED TERRITORY

By ELIAS W. HANNA

I. Israel: Aggression and Expansion

Illegality began at the moment of Israel's inception and before Israel came to exist actually. The Balfour Declaration in itself was an illegal act bearing no legal consequences whatsoever. It was issued by a Power possessing no title to Palestine at the time of issue. Palestine was then part of the two Ottoman Vilayets of Damascus and Beirut: from the human point of view an Arab land, and politically under Ottoman administration and sovereignty. That alien Power addressed its Declaration to one individual man — Lord Lionel Walter de Rothschild II — in his capacity as member of a European political movement (Zionism), and not to an existing sovereign state.

The Declaration is, therefore, null and void. First, because the two «contracting parties» were legally **incompetent.** Second, because its provisions were illegitimate. In that Declaration one state pledged to assist the Zionist Movement in founding a state on a stretch of territory belonging to neither, and to replace an indigenous people by a foreign one. It is an agreement that dispensed with the rights of others, without the latter's knowledge or consent. Therefore, the Declaration is invalid as a legally competent contract and cannot be effective, in particular, with respect to the right of others, i.e., those actually concerned and who were not a party to it.

The Balfour Declaration was unequivocally annulled by virtue of the provision made in article 20 of the League of Nations Covenant. In that article the contracting Powers recognized the nullity of all «obligations or undertakings *intorse* which are inconsistent with the terms thereof, and solemnly undertook that they will not hereafter enter into any engagements inconsistent with the terms thereof», i.e.,. with the principles and provisions of the Covenant. Furthermore, the contradictions between the Covenant and the Declaration can be easily detected, especially with respect to the right of peoples for self-determination on the basis of what the majority of the inhabitants decides(1).

Illegality survived and acquired an international character when the Mandate for Palestine was ratified. The Mandate itself as a document is inconsistent with international obligations and contradicts the Covenant of the League of Nations, although based on the same Covenant and deriving its raison d'être from it.

Palestine became since 1915 part of the independent Arab State aligned with the Western Allies and officially recognized by virtue of the Arab-British

(1) For a detailed study on the legitimacy of the Balfour Declaration, see Shafiq Rashidat's «*Zionist Aggression and International Law*», General Secretariat of the Arab Lawyers Union, 1968.

Treaty. Hence, the Covenant of the League placed it under section «A» of the Mandatory system, which made necessary its consideration as an independent state and restricted the task of the Mandatory Power to a provisional rendering of «administrative advice and assistance». Paragraph 4 of Article 22 stated the following proviso: «The wishes of these communities (i.e. those formerly belonging to the Turkish Empire) **must** be a principal consideration in the selection of the Mandatory»[2].

All these principles were abrogated when the Mandate for Palestine came into existence. They were used only to define the task of the Mandate in the **preamble** as that of enabling «World Zionism to make Palestine a National Home for the Jews of the world». Article 2 vested with the Mandatory the responsibility «for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home.» The text of the Mandate went into details which provided for facilitating Jewish immigration, naturalization (acquisition of citizenship), transfer of lands to Jewish immigrants, and Jewish participation in administration and education. More important than all that was the original legal violation of placing Palestine under direct British rule in the

(2) See full text of Article 22 in the *Convenant of the League of Nations.*

domains of legislation, administration and military control, which constituted a flagrant contradiction to the Covenant of the League and the wishes of the Palestinian people. The Mandate was the gravest abrogation of the provisions calling for tutelage, as these provisions were based on the principles of freedom, justice and rendering assistance to «under developed» peoples for the attainment of a higher standard of life and well-being. It was the clear indication of two things: First, the Mandatory System was a trick resorted to by European politics and diplomacy in order to satisfy America's president Wilson by adopting his points and principles in a verbal manner only, and to appease underdeveloped peoples by placing them under the drug effect of an imaginary independence. Second, British policy was subject to Zionist pressure to such an extent that the Zionists were given the greatest possible concessions at the expense of law and international moral practice, and more important still, at the expense of the Palestinian people.

Illegality persisted until it was transformed into a resolution passed by the League of Nations successor, recommending the partition of Palestine into a «Jewish State», an «Arab State» and an «International Zone» comprising Jerusalem and environs. The resolution violated the Charter of the United Nations as this Charter did not vest the General Assembly with the authority for removing states

already existing and creating other states in their place contrary to the will of the indigenous inhabitants and against their wishes. It also violated those provisions of the Charter which call for the establishment of an «International Trusteeship System» to be applied to territories held under a Mandate, with the purpose of promoting the advancement of the inhabitants and assisting «their progressive development towards self-government or independence as may be appropriate...». The Charter has made it clear that nothing should be undertaken to alter in any manner «the rights whatsoever of any states or any peoples or the terms of existing international instruments,» until trusteeship agreements have been concluded(3). Accordingly, Britain and the United Nations had, by way of applying these stipulations, **either** to transform the Mandate into a Trusteeship, or decide on the future of Palestine in the light of the principle of «right to self-determination», which was asserted by the Charter and incorporated into the Article defining its purposes and principles(4). In practical applications this prin-

(3) Articles 75, 76, 77 and 80 of *the United Nations Charter.*

(4) Chapter One, article one (paragraph 2). The General Assembly of the United Nations considers the right of self-determination, according to the prevailing views, a legitimate right capable of immediate enforcement, not just a mere theoretical right. (See. Rosalyn Higgins — *The Development of International Law through the Political Organs of the*

ciple would have meant going back to the concensus of opinion among the indigenous inhabitants of the country who unanimously rejected Jewish immigration and refused the partition resolution.

What clearly shows the extent of contradiction between the partition resolution and the right to self-determination, is the fact that the resolution vested the Jewish group with the power and authority in the area allocated for the Jewish state, although the Jews were numerically equal to the Arabs inhabiting that same area, and had only about ten percent of its land under their possession.

The partition resolution was no «resolution» (decision) in the strict sense of the term, because it was passed according to Article 14 of the United Nations Charter(5), and thus turned out to be a **recommendation** carrying with it no element of obligation necessitating its application or enactment.

Present discussions of the partition resolution do not exceed the limits of mere argumentation. The resolution was never enforced at all, as it was ref-

United Nations, -963). Whereas another opinion maintains that self-determination is a mere «criterion» and not a legal right. (See: Obed Assmoah: *The Legal Significance of the Declarations of the General Assembly of the United Nations,* The Hague, Martinus Nijoff, 1966).

(5) Bowett—*The Law of International Institutions,* (London, 1963), p. 47.

used by the Arabs altogether, whereas the Jewish minority welcomed it with consent and approval because it gave them more than what they expected, and because they considered it a provisional step towards the ultimate Zionist goal. The Arabs resorted to violence in opposing the resolution, and this in turn led to legal steps causing nullification of the resolution:

(1) On March 19, 1948, the Security Council was able to pass its resolution calling for a temporary armistice, i.e., immediate cessation of acts of violence in Palelstine, and establishment of conditions of peace and order in that country. The Council was informed by the U.S. representative that :

«since it had become clear that the Assembly Resolution could not be implemented by peaceful means and that the Security Council should recommend a temporary trusteeship for Palestine under the Trusteeship Council; **further,** the council should request the convocation of a special session of the General Assembly, and pending the meeting of the special session, should instruct the Palestine commission to suspend its efforts to implement the Partition Plan»[6].

(6) For a distinction between resolutions and recommendations, and the legally binding force to each one, see Mustafa Abdul-Aziz — *Votmg and Power Politics at the General Assembly of the United Nations,* (in Arabic), P.L.O. Research

(U.N. Document A-565 — Official Records of Third Session of the General Assembly).

This resolution was actually one of the few resolutions whose content was in harmony with the provisions of International Law. It also contained a solution with some hope for rescuing Palestine from the impending catastrophe.

(2) On May 14, 1948, the General Assembly of the United Nations adopted a resolution which **empowers** a United Nations **Mediator** to work for promoting «a peaceful adjustment of the future situation of Palestine» in the light of present circumstances there. The resolution also relieved the Palestine Commission from the further exercises of responsibilities under the Previous Partition Resolution of November 28, 1948[7].

Center, (Beirut, 1968), pp. 101, 102 — where the author refers to these sources: J.L. Brierly — *The Law of United Nations*, 6th Ed., (Oxford, 1963), p. 116.

Samouhy Fauq-el-Adah — *Public International Law* (in Arabic), (Damascus, 1960), p. 960.

(7) Credit is due to Rashidat, *op. cit.*, for calling attention to these two resolutions and deducing from them a conclusion which renders the partition resolution void. It should be pointed out, however, that the Security Council resolution, passed according to charter 6 in the U.N. Charter, is a non-binding recommendation. So is the above mentioned General Assembly Resolution, too. (See Bowett — *op. cit.*).

This resolution constitutes a departure from the provisions of the partition Plan resolution, and an introduction of a substitute solution, namely, conciliation through the good offices of International Mediation. Relieving the Palestine Commission from the further exercises of its responsibilities expresses on the level of implementation the stand of the Security Council which admitted in its turn the failure of partition to establish peace in the area[8]. The situation resulting from the general Assembly's resolution is still in existence apart from certain modifications to be discussed in due course.

The Jewish group adopted a negative stand on these two resolutions. The resolution calling for the establishment of an International Trusteeship meant

(8) The U.N. Conciliation Commission for Palestine called the Partition Plan Resolution back to life in the *Lausanne Protocol* dated March, 1, 1949. But Israel repudiated the terms of the *Protocol* under the pretext that Israeli signing of the Protocol was made under special circumstances — according to the Israel representative in the commission. As a matter of fact, these special circumstances were no less than persuading the United Nations to admit Israel into membership of the World Organization, in return for a pledge in the aforementioned protocol to repatriate the Arab refugees. The true reason for the Israeli rejection of Partition was that its acceptance would have meant relinquishing the gains made by military conquest and war.

nothing for the Jews, because it clearly contradicted the Zionist conception of the expected State. One day after the May 14, 1948 Resolution, the State of Israel was proclaimed in flagrant violation of the principles of International Mediation and peaceful conciliation. Israel violated the Partition Resolution which it considered the legal justification for its existence, by its occupation of territories falling outside the area assigned to the Jews in the plan provisions amounting to 22%, inhabited by some 400 thousand Arabs. Israel refused to relinquish these territories under the excuse that they constitute war spoils, and what has been gained through war and military conquest nullifies all agreements and resolutions arrived at before the acquisition. In this, Israel acts in accordance with a «fundamental» stand it has resorted to over and over again, namely: rushing to the defence of international resolutions whenever these happen to coincide with her interests, and declaring such resolutions of no value whenever they are found to bother or impede Zionist ambitions. One of the more recent confirmations testifying to such a stand was the statement made by **Israel's Foreign Minister, Abba Eban**, in the Hague on March 27, 1968, after the Security Council's resolution condemning the attack launched by Israel against Jordan. Eban said that the voting «was undertaken by a political body expressing the opinions of its member states»[9].

(9) As reported by News Agencies on 27.3.1968.

Amendments to the May 14, 1948, Resolution were introduced by the General Assembly in its resolution of December 19, 1948. The most important of these amendments were: establishing a state of truce between the Arabs and Israel, calling for the return of the Refugees to their homes and paying compensation for the property of those choosing not to return.

Israel refused this time also to comply with these U.N. resolutions under the pretext of having no capacity to absorb the returning Arabs, as this would push the Jews back to a minority status. Israel offered to compensate these Arabs who have lost property, either publicly or through secret mediations[10]. The idea behind this was to induce the Arabs to renounce their titles of ownership to the land, and hand in the documents to the Israeli authorities, in an attempt to legalize the **Land Requisition Law** of 1952 and the **Land Acquisition Law** of 1953 — whereby the ownership of Arab lands confiscated by Israel was transferred to those authorities.

(10) See Sabri Jiryis — *The Arabs in Israel*, translated into Arabic and published by the P.L.O. Research Center, Beirut, 1967. The book contains a clear hint to certain mediations undertaken by some authorized persons with the purpose of persuading the Palestinians resident in Lebanon to accept compensation for their occupied lands.

As for the basic objections that could be raised against the offer to pay compensations, it should be pointed out that such an offer contradicts the international resolution calling for payment of compensations only to these who refuse to return back after being given the opportunity to do so. The principle of reparations is inconsistent with the Israeli pledge in the **Lausanne Protocol** for the repatriation of the Refugees. It is only natural that one cannot accept a financial compensation for the loss of a homeland and the disappearance of a polity. For these reasons, the Arabs could only refuse the repatriation principle and ascertain their inalienable rights and titles.

No sooner had Israel firmly established itself in the area and embarked upon the task of economic and political construction amidst a stable situation, both internally and externally, than it committed a great number of aggressions against the neighboring Arab states, and was condemned a number of times by Joint Armistice Commissions and the U.N. Security Council. These aggressions culminated in the Franco-British-Israeli attack against Egypt in 1956, and reached their latest climax in the aggression of June 1967.

Israel has produced reasons justifying both wars — 1956 and 1967 — and these reasons were so similar, that we could consider both wars together. In

both wars Israel has based its aggression on two justifying arguments. The first one was the destruction of Arab jeopardy of the claimed right to free passage in waterways leading to Israeli territory, especially with resepct to the Red Sea. The second one was a way of repulsing Arab Fedayeen raids and a retaliatory measure to avenge these raids. We shall, however, dwell upon the first argument here.

The Arab right to the Gulf of Aqaba and the Straits of Tiran derives from interconnected historical and legal factors which are clear-cut and firmly established. From the pure historical viewpoint, the Gulf of Aqaba became Arab at least since the Arab Conquest, and has remained surrounded by the Arab State since then, until it was succeeded by the Ottoman Empire and afterwards by the independent Arab States of Saudi Arabia, Jordan and Egypt. The Island of Tiran, situated at the entrance of the Gulf, was part of Saudi Arabia territory until 1950, when it was transferred to Egypt by condescension. Thus, the navigable part of the mouth of the Gulf — i.e., that part situated between the Island of Tiran and the Coast of the Sinai Peninsula became entirely included within Egyptian sovereign territory. It is also known that this Strait was historically exempted from international rules of passage applying to the Suez Canal in accordance with

the convention of Constantinople in 1888[11]. «The continuous and peaceful display of territorial sovereignty is as good as a title», or leads to valid acqui-

(11) For a definition of the concept of International Straits see: The Judgement given by the International Court of Justice in The Corft Channel Case (1949), where the decisive criterion in the opinion of the Court stipulated that Strait as «connecting two parts of the high seas and the fact of its being used for international navigation» without incurring the objections of the coastal state concerned.

For the consequences to be drawn from considering the waters of a certain territory as historical waters, see:

Ahmed Shukeiry: *Territorial and Historical Waters in International Law,* (P.L.O. Research Center, Beirut, 1967), pp. 171 ff.

For the designation of Gulfs as being in a situation similar to inland waters, see:

(a) International Law Committee (ILC), Article 7 in the «Draft Code on the Law of the Sea».
(b) Judgements of the Supreme Canadian Court of Justice in the Chaleur Gulf Case.
(c) Judgement of Alabama Deputies Court in the Chesapeake Gulf Case.
(d) Privy Council's resolution on the case of Conception Gulf.

With respect to the Arab and national character of the Aqaba Gulf and the Tiran Straits, see a study published before the establishment of Israel in the «*American Journal of International Law*» (Supp. April, 1929).

sition of rights which cannot be revoked or abrogated by an illegal act such as military occupation. Israel has committed such an illegal act by its occupation of Arab coastal lands which came to be known as **Eilat.** This was in March, 1949, after the United Nations Resolutions have established an Armistice between the Arabs and Israel, and after the signing of the Armistice Agreement between Egypt and Israel in February, 1949. It could be categorically maintained, therefore, that Israe's occupation of the village of Um Ar-Rashrash (Eilat) constituted a violation of the stipulations and rules[12] of the Armistice. Yet, the response of the Security Council did not go beyond the gesture of putting on the records, Israel's non-compliance with United Nations Resolutions and the Partition Plan.

On the other hand, the body of water extending from the coast of Sinai across the straits hardly measures one mile; that is to say, it does not exceed the international minimum for the Territorial Water belt, and amounts only to one twelfth (1-12) of the Egyptian belt of territorial waters as defined in accordance with the Presidential Decree No. 180 issued in 1958.

This view applies also to the Gulf of Aqaba in its entirety, because the waters of the Gulf are divid-

(12) As testified by Ralph Bunche in his cable to the president of the Security Council at the time of aggression.

ed between the United Arab Republic and the Kingdom of Saudi Arabia, thus leaving no room in between for international waters as a result of the pertaining to these two states. The Arab stand of Gulf's narrowness with respect to territorial waters denying the international character of the Gulf receives sufficient support in the provision of Article 7 of the Geneva Agreement (1958), and from the judgement pronounced by the Tribunal of the Permanent Court of Arbitration[13]. Both of these have considered the Gulf as retaining its character of national sovereignty as long as its opening does not exceed th maximum limit of 24 miles. Hence, it is confirmed that the Gulf of Aqaba and the Straits leading to it are territorial national waters in the first place, and Arab territorial waters in particular.

The third consideration to be emphasized is the fact that the existing situation between the Arab states and Israel since the Palestinian War of 1948 is one of War Armistice, that is, a cease-fire agreement which leaves the belligerent parties in full retention of their status and rights. The Armistice, according to conventions of International Law, does not legally mean ending the state of war, but on the contrary, a state of war persists with all its legal

(13) The Case of the North Atlantic Coast Fisheries between Britain and the United States of America in 1910.

consequences pertaining to relations between the belligerent parties themselves, as well as to their relations with civilians and third parties[14]. It could be deduced from all this that the United Arab Republic has the right to impose a state of maritime siege on the enemy[15], to confiscate all vessels belonging to that enemy, and to search those ships belonging to third parties for «contraband of war», lest these reach enemy hands to be used in one way or another against the Arab states or one Arab state in particular. A very recent case of the state of maritime siege is the one imposed by the United States of America on Cuba. Although a state of war does not exist between the two, yet the siege was imposed for the mere conviction that there exists a menace to America's peace and security[16].

(14) See Oppenheim, *International Law,* (London, 1952), Vol. II, p. 547.

(15) «Maritime Siege is an exercise of the rights of belligerents» — statement made by Ambassador Austin, May 22, 1948. See XVIII Bulletin, Department of State, No. 465, (May 30, 1948), pp. 695, 697.

(16) No attempt is being made here to appraise the Siege of Cuba, as this subject abounds with legal complications and needs a separate detailed study. For an analysis of the Siege, see E. Giraud — «L'interdiction du recours à la force — La théorie et la pratique des Nations Unies», in *Revue Générale de droit international public,* 3ème serie, T. XXXIV, T. LXVII, 1963.

As a matter of fact, Israel has tacitly recognized Egypt's right to close the Gulf against Israeli ships and vessels in accordance with an agreement concluded in 1953, through the good offices of the Joint Egyptian-Israeli Armistice Commission. According to the agreement Israel pledged that its ships would not enter or pass through Egyptian territorial waters.

Hence, it becomes clear that Israel has resorted to an illegal basis in justifying the two full-scale attacks launched against the surrounding Arab States. The bulk of evidence, of facts and arguments as well, support the Arab stand point. That ultimately warrants the conclusion that Israel's insistance on free maritime passage was, on the one hand, a step towards protecting its practical and economic interests, and on the other, a pretext for expansion.

The aggressive nature of both wars, 1956 and 1967, becomes apparent from the actual fact of war itself and by virtue of the measures taken as a result of the war.

(1) Armistice Agreement between Israel and the Arab States provided for the effectiveness of all stipulations until a peaceful settlement is reached. Since such a settlement continued to recede, every attack launched by one party against the other

constitutes a flagrant violation of those agreements.

In this context, one could raise the question of implementing international principles and conventions which call for a peaceful settlement of international disputes and lay emphasis on taking effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of agression or other breaches of the peace[17]. Here arises the following difficulty in the application of these provisions : whenever peaceful relations maintain between two states of the world, they are to refrain from resorting to acts of violence and aggression in settling any dispute arising between them. But when a state of war exists — such as the case between the Arabs and Israel — it is the law and customs of war that conduct and regulate relations between the two belligerent parties. According to this opinion, both wars of 1956 and 1967 were merely on extention of the war which has continued since 1948.

This stand could be countered on the basis of article 2, Paragraph 4 in the United Nations Charter : «All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any

(17) *Charter* of the United Nations, Preamble and article 2, paragraphs 3 and 4. See also:

Kellogg — Briand Pact — «*Treaty for the Renunciation of War*», article 1, 1928.

state..». Member States of the United Nations Organization have to fulfill «in good faith the obligations assumed by them in accordance» with this paragraph of the Charter. If such an obligation has been disputed under exposition to armed attack, it is automatically revived by the mere agreement on a cease-fire. By way of application to this, the following could be maintained : Assuming the validity of Israeli claims with respect to rights of free passage in Egyptian straits, it becomes the imperative duty of Israel to resort to all kinds of pressures and measures provided by the United Nations, in order to attain its goals without the use of violence and the starting of a war.

(2) During the war operations of 1967 and after their cessation, Israel has followed a policy of exerting pressure and forced deportation, which in turn led to the evacuation of hundreds of thousands of Arabs from their lands to the neighboring Arab States.

(3) As soon as Israel cccupied the Arab city of Jerusalem, it embarked upon taking legal, administrative and material measures destined to make the Arab sector of the city an Israeli territory incorporated within the state of Israel. This annexation constitutes a violation of international law conventions as stipulated in Article 47 of the Geneva Con-

vention (1949). Annexation cannot be affected during an existing state of war[18], because such a measure has to be closely connected with the continuous and peaceful display of territorial sovereignty over the occupied land — a cause which does not maintain with respect to Arab Jerusalem.

The General Assembly of the United Nations has taken a bold stand on this mater. Israeli measures to change the status of the city were condemned as invalid, and Israel was called upon to cancel those measures and refrain from similar ones in the future[19]. When the Secretary-General reported on those measures, the General Assembly managed to take another resolution[20] expressing regret and concern for Israeli defiance and non-compliance with the previous resolution, and denouncing Israel's categorical refusal to abide by it. The latter resolution also called on Israel to cancel the measures destined to change the status of the city.

At the same time Israel declared its clear intentions of retaining other occupied Arab territories for miiltary, historical and religious considerations, thereby revealing the true nature of the June 5, 1967

(18) *U.S. Department of the Army Field Manual* (FM 27-10) on the Law of Land Warfare (1956), p. 158, 140.

(19) See General Assembly Resolution No. 2253 (ES — V) of July 4, 1967.

(20) G. A. Resol. 2254 (ES — V).

aggression[21]. It clung to such a stand inspite of the Security Council's resolution of November 22, 1967, passed unanimously by all voting member states and resolving the necessary withdrawal of Israeli troops from Arab territories occupied during the war.

Summing up the first argument put forward thus far in this essay, it could be said that the bulk of historical and legal evidence confirms the fact that the establishment and growth of Israel came as a result of a series of acts contrary to the principles of International Public Law, and to the resolutions passed by International Organizations and bodies, in spite of all the political and diplomatic pressures

(21) The following statements made by Israeli leaders are cited by way of evidence:

Eban (26.4.1968): «Israel does not favor at all the return to a position where northern settlements are under enemy fire, there will no longer be an Egyptian finger in the midst of our country, and Jerusalem will never abandon its unity». (*Jerusalem Post,* 28.4.1968).

Eshkol at Hadassah Gathering: The Jordan River «is the natural border of the State of Israel and of the Land of Israel». (*Jerusalem Post,* 15.2.1968).

Dayan The Gaza Strip is an integral part of Israel, (*Lamerhav,* 6.7.1967).

Minister of Transportation, Carmel: «Israel will remain in the Golan Heights and insure the security of Galilee». (*Jerusalem* Post, 15.1.1968).

exerted on the Member states. Violence has been the predominant character of Israeli methods and moves. This constitutes an inevitable predicament in view of the nature of aims proclaimed by the Zionist Movement, since these aims cannot be realized under the sovereign rule of law.

If the concept of aggression in International Public Law has been defined as pertaining to those cases where a state attacks another in the absence of justifying excuses, such as legitimate self-defence[22], it may be more appropriate to deem as an act of aggression when a group of people move into the territories of a certain state, thereby

(22) Most definitions of the Concept of Aggression postulate the «use of force» or «a serious threat to resort to force» as requirements for an act of aggression. The Aggressor being considered that party which first resorts to hostility measures.

See on the Concepts of Aggression:

(a) Jessup, Rapporteur — Harvard Research, «Draft Conv....», *American Journal of International Law*, Supp. vol. 33, pp. 829 ff.

(b) Quincy Wright — «The Concept of Aggression...», *Am. J. Int'l L.*, 1935, vol. 29, p. 386.

(c) Kopelmanas — «The Problem of Aggression...», 31 *Am. J. Int'l L.*, (1937) p. 244, (with reference to Diamandesco, «*Le Problème des l'Aggression...*», (Paris, 1936), p. 15.

(d) Giraud, *L'interdiction...», op. cit.*

determined to gain control of its government machinery, deport its inhabitants and intent upon intimidating and obliterating its political existence.

The basic nature of Israeli presence, in both the old and the new Arab territories, is no doubt one of foreign occupation. Viewed from this proper angle, **Resistance** becomes the right and duty of every Arab who has lost his lands or part of it. It becomes a lawful act sanctioned by International Law.

II. International Offences in the Administration of Arab Affairs

In his great opening speech for the general prosecution, before the International (Allied) Military Tribunal convened for the trial of prominent Nazi War Criminals at Nuremberg, U.S. Justice R. Jackson reminded his audience that the record of crimes according to which the accused are being tried today is the «record» by which History will judge us tomorrow[23].

Subsequent history did vindicate the resolutions of the International Military Tribunal, and they were at the hands of the United Nations Organization and its special commissions. On January 11, 1946, the General Assembly passed a resolution (1/95) con-

(23) See *International Military Tribunal* — Trial of War Criminals, vol. 2, (Nuremberg, 1947), p. 101.

firming the principles of International Law as adopted by the Charter of the Nuremberg Tribunal (August 8, 1945) and the resolutions issued by that Tribunal. The **International Law Commission** then submitted a report to the General Assembly, upon the latter's authorization, defining crimes punishable under International Law and designating the rules of personal (individual) responsibility for these crimes. The mentioned report adopted the principles laid down in the Nuremberg Charter and the judgement of the Tribunal. It was approved by the General Assembly and entered into force as of January 12, 1950.

Other confirmations for the judgement of the International Military Tribunal were included in the **Universal Declaration of Human Rights** (December 10, 1948), as well as in the «convention on the prevention and punishment of the crime of **Genocide** approved by the U.N. General Assembly on December 9, 1948»[24], and the «Draft Code of Offences against the peace and security of mankind» submitted by the International Law Commission to the General Assembly of the U.N. in its Paris Session, 1951.

These International Resolutions, in addition to the Hague Conventions («Regulations Respecting the Laws and Customs of War on Land») and the

(24) Resolution 260 (III), U.N. Doc. A/810, p. 174.

Geneva conventions of 1949, have succeeded in laying down permanent principles of International Law carrying the power of obligation towards all states of the world, whether these states were not a party to their approval or no signatories of the respective conventions[25].

It is in the light of these principles of International Public Law that an attempt will be made here to dwell briefly on laws, ordinances, and practices in the Israeli administration of occupied Arab territories, with the purpose of providing ample evidence for the fact that Israeli authorities of occupation have committed offences against International Law, and that such violations should be met with positive Arab resistance.

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(25) Consult the following: *International Military Tribunal,* vol. 22, p. 497; and other judgements passed by the Nuremberg Trials to the effect that the Hague conventions are customary practice among all civilized nations and do possess a public attribute (capacity) with respect to current laws and customs of war. Wœtzel relies upon the international practice (Usage) of enforcing the Hague Convention in various instances to maintain that these principles have been incorporated in International Public Law, and that, consequently, they possess the power of obligation for all states, irrespective of whether they are signitories to the conventions or not.

See Woetzel—*The International Trials in International Law* (London, 1960)

A. Military Rule

1. Pre-June-War Ordinances

From the time of Israel's establishment, Military Rule has been the applicable situation to a great majority of Israel's Arab inhabitants (about 80% of them). They are subject to its decrees, both as individual persons and as members of a human group exhibiting its own characteristic features. The restrictions imposed on the freedom of individuals derive especially from the provisions of the «1945 Defence Laws» laid down under the Britsh Mandate, in spite of strong Zionist opposition. These laws empower the military commander to exercise the right of prohibiting any person from entering certain areas and obliging him to report his residential address «at any time», and to show up at the nearest police station any time he is asked to do so; also, to remain indoors from an hour after sunset till sunrise, it being understood that the police reserves the right of checking on him at any desired time. It is also up to the Military Commander to determine the right of each individual person to keep certain things, and «to impose restrictions on his employment and work and on his manner of establishing contacts with others or exchanging views with them, and on what pertains to his activity for spreading news and opinions» (Article 109 and 110). More than that, the aforementioned laws authorize the military

commander to issue orders for the arrest of any person and for his detention at any camp chosen by the Commander himself. The detained person has no choice but to make an appeal, with respect to the order for arrest, before an advisory commission that is incapable of doing anything except recommendations. The striking thing about these powers is that the only restriction on the period of detention was not provided for in the text of the law, but was rather left for an instruction issued by the command of the Israeli Army, limiting that period to one single year. There is, nevertheless, no provision to prevent the military commander from renewing the order for arrest year after year (Article 111). Even more than that, the Military Commander enjoys the right and power to deport any person outside the country's territory, or to banish him and prohibit his return. Also he has the power to prevent any person being outside the country from returning home (Article 112). It is, moreover, his right to confiscate or demolish any property, if he happens to entertain «some doubts» that a bullet or a bomb has been fired from that house (Article 119). The Minister of Defence can also confiscate property, whenever he can be sure that the property owner has violated these laws or committed an offence for which he has to be tried before a military court (Article 120).

As for collective restrictions, these are contained in the aforementioned «Defence Laws» and in the Emergency Regulations (Security Zones) of 1949.

Defence Regulations permit the Military Commander to declare a certain area or zone a «closed» one, thereby forbidding both entry and exit except through a special permission issued by him (Article 125). A later amendment was introduced in November, 1963, under the pretext of easing military restrictions. Thus, obtaining a permission came to require a previously received written notice to that effect, whereas «closed areas» remained the same as before. Thousands of Arabs occupying leading positions in the community, but refusing to collaborate with occupation authorities, were notified of orders to that effect, and their names were put on the so-called «Black-List». Such a list has the capacity to absorb the name of every person deemed by the Military Commander eligible for exemption from the benefit of the new facilities, and hence remain subject to the old defence regulations. That these new legal amendments are not serious can be clearly seen because the proviso of obtaining a military permission when the movement happens to be from one closed area to another was retained. The purpose was to maintain the state of actual siege imposed on the Arab inhabitants and to forbid them from establishing contacts with each other. The initial provision contained in article 125 has been put into

force anew in accordance with the regulations issued after the June War.

In addition to the above described «closed areas», the Military Commander has the right, by virtue of the Emergency Regulations (1949), to prevent entry into «Security Zones» without his permission. As for the powers vested in the Minister of Defence, these are more serious and dangerous, since he is authorized to evacuate the inhabitants of «Security Zones» at all times for reasons of public safety and order, for Israel's security, for crushing insurgence and for providing the public with supplies and vital services. In other words, such an authority can be exercised at any time and under all circumstances, because public safety and order, security and ensuring supplies and services are arguments that could always be resorted to, by way of justifying «routine» acts such as the constant evacuation of inhabitants from their lands.

Administrative control and supervision of emergency regulations' implementation does not exist right from the very beginning. Judicial control, on the other hand, does exist, but it refuses to intervene, when the military measure taken is based on «reasons pertaining to security», or when such a measure is intended to guarantee public safety and order — in other words, with respect to most cases

where the Emergency Regulations apply[26]. Lest it should be said that the Supreme Court acts unjustly with respect to cases where it refuses to intervene for the above reasons, the same court has issued a resolution to the effect that it «would not fall under the magic spell of words to justify acts committed by military authorities». And since conducting investigations with the Military in order to confirm their motives does not fall within its jurisdiction, the solution was found to be : either to believe what they say, or not to believe it[27] !

The Military have kept for themselves the authority and power to implement military regulations when the Israeli Government decided to abolish military rule on November 6, 1966. A lot of noise has been aroused on this subject, whereby local as well as international media of information and propaganda hastened to highlight such a gesture and underline the democratic character of Israel, its secularism and the just treatment it accords to the Arab inhabitants. On the 9th of that same month

(26) The Israeli Supreme Court of Justice has pronounced a number of judgements adopting this stand; see Judgements No. 7, p. 913 and No. 10, p. 105, and No. 31, p. 272 in *Rulings of the Supreme Court of Justice.*

(27) Abou Ali and others against Ferben and others: concerning a decision for banishment — *Rulings of the Supreme Court of Justice* (13), p. 473.

the Israeli Government has managed to persuade the Knesset for approval of its decision, which thus became a law. It became clear then that Israeli propaganda had no actual basis. What has been abolished was the «military administration» and not the military regulations. That is to say, regulations of 1945 and 1949 remained in force, since no subsequent legislation was issued to abolish them or to introduce substitute provisions. However, the implementation of those regulations was entrusted to the local police, which enjoys most of the powers exercised by the Military and works under their supervision and control[28]. But since the means at the disposal of the local police are limited and need strengthening and extension, it was taken for granted that the transfer of authority from the army to the police would take a period of no less than two years. Hence, the new arrangements had no chance for seeing the light, as the June War came to bring back everything to its former state of affairs.

2. Post June-War Decrees

After Israel's occupation of large stretches in Arab territories (June 1967), an «order on security instructions» (Unified Text) was issued, and each military commander was authorized to proclaim that

(28) See *London Times,* November 8, 1966. Also, *L'Orient*, Beirut, November, 10, 1966.

order in his miltary zone. The text of that order did not specify the geographical scope of application, and it could be maintained that either it applies for recently occupied military zones, or it is valid for all Israeli territories, since it does not contradict the previous military regulations.

As far as the content is concerned, this order reiterated the provisions of articles 109, 144 and 115, previously expounded, with respect to restricting the individual's freedom of residence, his movement, and subjecting him to supervision — in the following articles respectively: 65A, 66 and 67. Article 70 sanctified the original provision of Article 125 in the Regulations of 1945 and retained the old version, thereby granting the Military Commander the right to declare areas for «closed», and prohibiting any Arab from entering such «closed areas» unless he obtains a written permit from the Commander himself.

On the other hand, the new order introduced restrictions and penalties unknown in the previous regulations. It forbids, for instance, every person from getting in touch with another person through any means «if there happens to be a reasonable basis for the assumption that he is working for the enemy...» (Article 46A) It also prohibits any act «giving reasonable grounds for the belief» that it could imply hindering the Israeli forces or those

working in vital services from performing their functions (Article 52). The penalty set for these two offences is one of two things: either imprisonment up to 5 years, or paying 5000 Israeli pounds, or both penalties together (Article 71 in conjunction with Articles 46A and 52). The order allows every Israeli soldier, without any warrant for arrest, to put under arrest any person violating the stipulations of that order, or anyone leaving room for doubt that he may have committed an offence against the provisions of the order. In case this happens, a warrant for arrest should be obtained within 96 hours, it being understood that the warrant is issued either by a police superintendent for a maximum period of 7 days, or by the military court for a period not exceding 6 months with no need for a statement of accusation (Article 60).

The strangest one among these stipulations is nevertheless the provision of Article 73, which lays on the accused person the burden of proving his defence and consequently his innocence, and this at a time when the accusation is based — as shown above — upon presupposition and suspiciouness rather than on evidence and certainty.

B. Implementation of Military Rules

Israeli authorities have used, and continue to use, military rule as a weapon for securing certain

important victories which draw them nearer to this ultimate aim of creating a **purely Jewish State** in the racial and religious sense.

In his defence of Article 125 concerning closed areas which constitute the basic nerve of military rule in Israel, Shimon Peres wrote saying that making use of this article «is a direct continuation of the struggle for Jewish settlement and immigration... If we are agreed upon the far-reaching political significance of settlement, then we ought to prevent the creation of facts (the building of Arab houses in Galilee is meant here in particular) running counter to the Zionist conception of an Israeli state and also contradicting the Law»[29].

Such a standpoint fully agrees with what Ben Gurion himself says when he asserts that «Military rule was invoked and instituted in order to defend... the right to Jewish settlement in all parts of the state»[30].

What is the relationship of military rule to settlement? Both the apparent and the formal relationships push one into the belief that the single benefit to be derived from military rule is the maintenance of security and stability in the country. But a closer

(29) See Israel Daily *Davar*, 26.1.1962.

(30) *Knesset Records* vol. 36, p. 1217 (20.2.1962), *(Divrei* Haknesset).

look at implementation provides us with conclusive evidence that what is going on at present in Israel, and what has gone on during the last 20 years, is not known in any state of the civilized world. The last implementations witnessed by the world were those Nazi measures undertaken before and during World War II. It was inevitable that Israel, by way of enforcing its far-reaching policy, should commit offences against International Law. This will be the focus of the discussion in the following part.

1. Racial Discrimination

It should be emphasized at the outset that the formerly discussed military regulations apply only to the Arabs in Israel, although no specific mention of this is made in the provisions. Enforcing these Regulations against the Arabs is accompanied by violence and stress, only to show that they spring from harboured feelings of racial hatred and resentment, rather than from reason or practical need. We rely in our information upon the statements made by Israeli men of thought and politics, who were motivated, either by internal political dissentions or by a residue of human feelings, to unmask the existing conditions prevailing inside Israel.

Jacob Hazzan, Mapam member of the Knesset, says: «Military rule has worked... towards segregating Arab inhabitants, by means of discriminating

against them in all the walks of life, and also by turning them practically into 2nd class citizens... Military rule is creating single handed out of the Arab minority a bastion of national humiliation, discriminaton and estrangement». The result of this is «the breeding of hatred»[31]. Whereas Michael Assaf says that the structure, internal logic and actual functioning of military rule are all based upon the intention of punishing a group of people for the mere fact that they happen to be Arabs[32].

Israeli men of thought did not refrain from fighting military rule. They organized a petition of protest declaring that the Arabs living in Israel «do not enjoy equal rights and are subject to discrimination and persecution». The military rule deprives them of the freedom of movement and residence, and refuses to admit them into the Histadrut (Israeli Federation of Labour) as members having rights and duties equal to those of their Israeli colleagues. They are not offered jobs in most institutions and establishments[33].

Such a policy of discrimination runs counter to all international conventions and principles pertain-

(31) *Ibid.*, vol. 33, p. 1317 (20.2.1962).

(32) See the independent Israeli fortnightly *Beterem*, 15.5.1953.

(33) See the monthly publication of the Ihud Association, Ner, July - August, 1958 (Jerusalem).

ing to the status of people living in occupied territories. In addition to general principles and customs prohibiting the persecution of people inhabiting occupied territories, Article 6 in the Charter of the International Military Tribunal has come to include under the definition of «War crimes» those measures leading to the ill-treatment of civilians. It considered as «crimes against Humanity» persecutions on political, racial or religious grounds.

The report of the International Law Commission, approved by the U.N. General Assembly in 1950, has adopted these two definitions, and hence, they became a permanent legacy in the Law of Nations upon the latter's approval.

The «Draft Code of offences against the peace and security of mankind» has considered a crime of this kind all the acts committed by government authorities, agencies and individuals «with intent to destroy, in whole or in part, a national, ethnical, racial or religious group».

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) forcibly transferring children of the group to another group..

It becomes clear, in view of the above-mentioned provision and definitions, that racial discrimination practised against the Arabs in Israel — and confirmed by statements of Israeli individuals and official bodies — constitutes the following crimes:

(1) War Crimes;

(2) Crimes against Humanity;

(3) Crimes against the Peace and Security of Mankind.

In order to realize how serious and far-reaching such a discrimination can be, we ought perhaps to study various measures taken by the Israeli Government against the Arabs, and to cast a comprehensive look at the existing state of affairs. If we tie between Israeli demands to establish a **purely Jewish** state and the plans for Jewish settlement in the entirety of Territories held by Israel, adding to these: programmes for the transfer, deportation, evacuation, expropriation and destruction of heritage — we find that Israel deliberately intends to destroy the Arabs as a national group, in accordance with the definition of the «Draft Code of Offences against the Peace and Security of Mankind». Measures taken by Israeli authorities and legislations issued by these authorities are but connecting

links in the chain of a carefully worked-out scheme and a far-reaching conspiracy against the very existence of the Arab people as such. Let us turn to those other links in the chain.

2. Deportation, Expulsion, and Annihilation of Property (Devastation)

Contrary to the provisions of Article 6 of the Charter (International Military Tribunal) and to the resolution of the U.N. General Assembly endorsing those provisions, and contrary to the Hague and Geneva Conventions, Israel has committed a series of acts which the International Law prohibits. These acts, committed by the Israeli authorities of occupation, fall under the definition of war crimes and crimes against Humanity, and are also prohibited under the laws of the «Draft Code of Offences against the Peace and Security of Mankind», even when committed by authorities against their own citizens. These acts were committed as a result of the synthesis affected between the aforementioned military regulations and another series of laws pertaining to requisition, acquisition and disposal of Arab property. Nevertheless, the tremendous powers vested in military commanders and governors prompted them not to abide by the limitations and obligations of these arbitrary regulations, but rather to exceed the jurisdiction of those regulations through inhumane acts, blinded by their

fanaticism and prejudice to Israel's ultimate goals.

Crimes Committed with Israeli Jurisdiction

The first part of acts contrary to International Law was committed under a legal pretext and cover. Such a practice is in line with the general Israeli policy of laying emphasis on formalities and attributing a legal character to all Israeli activities. However, codification of crimes under international law and legislation to that effect does not negate their criminal character and nature, nor does it justify crimes vis à vis the injured and with respect to international organizations.

The **Absentee's Property Law** of 1950[34] was issued as though to prepare the way for subsequent laws intended to confiscate Arab property and expropriate the owners of Arab lands. An absentee in this law meant «a person who left his ordinary place of residence after 29.11 1948» or was a Palestinian citizen and left his ordinary place of residence in Palestine:

(a) for a place outside Palestine before September 1, 1948; or

(b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the state of Israel or which fought against if after its establishment.»

(34) *Laws of the State of Israel,* vol. 37, 1950.

In other words, every Palestinian Arab who was outside Palestine before September, 1948, in one of the neighboring Arab countries or in a foreign country, or who left Palestine as a result of the conducted military operations, or who sought refuge in the areas occupied by Arab armies (that withdrew after the signature of Armistice Agreements), is considered an **absentee** in the legal sense of this term. Even where these conditions and stipulations fail to maintain, the Custodian of Absentee property «may stipulate»... by «certificate under his hand» that «some other property becomes held property.» (Article 28, subsection b). Powers vested in the custodian to determine «in his sole discretion» the requirements for «absentism» are absolute, since «the custodian is not to be questioned regarding the source of his information...» (Article 30g). «Were the custodian has acquired any property which was **not** absentee's property at the time of the acquisition... the acquired property shall become held property»... (Article 4d). The «legal» consequences for considering a person or body of persons as absentees amount to a transfer of the entire financial assets — not only of the landed property — to the custodian himself.

In accordance with these stipulations the custodian was vested with the authority to declare any person or body of persons **«absentees»**, thereby laying hands on their property, only to transfer it to a Kibbutz or some other Israeli establishment.

In order to provide this law with a maximum degree of effectiveness, a certain measure of coordination was achieved between it and article 125 of the Defence Regulations Law (1945). Thus, the Military Commander came to rely upon those powers vested in his office by virtue of this article for «closing» certain Arab areas in a manner destined to prevent their inhabitants from returning to their homes. Thereupon, the custodian undertakes the next step by considering the inhabitants as **absentees** and decides to confiscate their property and hand it over to the Israeli state.

Such a «Game» was no exercise of wits in the realm of theories and hypotheses, but rather a hard stubborn fact applied against the village of Al-Ghabissyya and twelve other Arab villages although the Supreme Court has already pronounced a ruling with respect to the inhabitants' return to their village (Al-Ghabissyya). It is also noteworthy that most «**absenteed**» inhabitants of Arab villages are still residents in Israeli territory and not persons who sought refuge in other countries. They left their villages in most cases as a result of forced evacuation undertaken by the Israeli Armed Forces.

On the other hand, we find «provisions for the hour of Emergency (Security Zones, 1949)[35] vesting the Minister of Defence with tremendously wide

(35) *Codified Articles* (11), 27.4.1949, p. 169.

powers, although such provisions apply to a relatively small stretch of territory («security belt»» extending along the borders of Israel. The powers referred to mean : declaring that area or part of it as «security zone» and subjecting entry or exist to the requirement of obtaining a permit. A special authority appointed by the Minister of Defence can order a person resident in one of the security zones to leave his place of residence within 14 days notice.

Military authorities have relied upon those provisions to order the inhabitants of one village (Aqrat) to leave it, three years after they were driven out by Israeli forces of occupation on October 31, 1948, and in spite of the fact that a ruling has been pronounced by the Supreme Court of Justice[36] stating that no «legal obstacle» stands in the way of their return to their village. When the inhabitants of the village appealed to the Supreme Court against the new military regulation, the Israeli forces resorted to dynamiting the entire village on December 25, 1952 and handed over its lands to two Israeli settlements.

The Minister of Agriculture has also received his share of the powers for confiscating Arab lands in the «Emergency Regulations» concerning «Cultiva-

(36) The Case of Mubadda Daoud and Others Against Minister of Defence and Others — See appeal 51/64 *Rulings of the Supreme Court* (4), p. 461.

tion of Waste Land» and «Use of Unexploited Water Sources» (October 11th, 1948)[37]. He was authorized «to obtain control of land after erecting a warning on it that it should be cultivated within 15 days». It was left up to his sole deliberation to determine whether the Arab owner of that land did really start cultivation, was about to start, or was planning to continue cultivation. Provisions laid down in these Emergency Regulations were also coordinated with the famous Article 125 in such a way as to let the military authorities prevent Arab peasants from returning to their lands located in areas declared as «closed». Thereby the Minister of Agriculture would be ready to issue his order «out of conviction» calling for confiscation by the state since the owners cannot continue cultivation. The same Minister was also given power to assign lands to cultivators without any legal title. Such an act could have retroactive effectiveness by way of legalizing other acts of occupation committed by Israeli Kibbutz against Arab lands.

It is as though all these Regulations were not sufficient to satisfy the desires of Israeli authorities, for in 1949 the same authorities laid down the «Emergency Regulations for the Requisition of Property Law» (June 13, 1949). Provisions of this law

(37) See *Iton Rishmi* (Official Gazette), No. 27, 15.10.1948, «B», p. 3.

disclose more than any other law the true aims behind it. It gave the Israeli Government power to appoint an **Authority** for issuing orders to obtain control of lands, and for bringing in Jewish settlers whenever such measures are deemed necessary for the defence of the State, for public security and the procurement of vital supplies and services and for absorbing immigrants or settling discharged soldiers or war victims. Nevertheless, judging from experience, the **basic need** from among the ones just enumerated can only be : obtaining control of the land for settling new Jewish immigrants at the expense of the Arab inhabitants who are obliged upon expropriation to move to other places.

The only loophole in the above mentioned laws and regulations, seen from the Israeli viewpoint, is the fact that no ultimate decision has been taken concerning the ownership of the lands held under control. Therefore, a subsequent legislation was passed[38] on March 10, 1953, and came to be known as «land Acquisition (Validation of Acts and Compensation) Law». On September 29, 1953, the custodianship of Absentee property concluded an agreement with the **Development Authority** (established since July 31, 1950), according to which Arab abandoned property was tranferred to the latter. Around

(38) For «Land Acquisition (Validation of Acts and Compensation) Law», 1953, see *Laws of Israel* (122), 20.3.1953, p. 58.

250 Arab villages were thus transferred to the name of the Development Authority. Compensations were determined by the law on the basis of land prices in 1950 (i.e. three years before the law was issued). Hence, they were nominal prices; in 1950 the prices were low because of the war and instability, the Israeli pound was still equivalent to the Sterling Pound, whereas by 1953 it has gone down to 20% of the sterling pound.

No doubt Israeli authorities were able to save a great deal of their compensations, because the owners of a large part of the lands are refugees residing outside Israel. Israel has also benefited from the insistance on the part of numerous Arabs to refuse any compensations.

In addition to all that, various laws were issued to one single purpose obtaining control of Arab lands under the following pretexts — either by virtue of the claim that the time limit for expiration of titles has not been reached yet, and therefore, the property could be acquired without compensation(39); or by turning frosted areas from public property to lands under development, thereby transferring ownership to the state(40). The Minister of Finance could also deem the requisition as necessary

(39) «*Law* of Superannuation», 1958 — *op. cit.* (251), 6.4.1958.

(40) Forests Law.

for the public good[41]. The most recent of these laws[42] has provided room for new measures to be implemented in the lands of the West Bank. Here it should be remembered that Article 120 in the Defence Laws of 1945 authorizes the Military Governor to confiscate individual property, if the Minister of Defence finds out that this person has violated those Regulations or committed an offence falling under the Jurisdiction of a Military court.

The above mentioned Regulations and Laws have succeeded in obtaining control of lands estimated at one million dunams owned by Arabs resident in Israel, in addition to vast areas of land owned by Arabs living in neighbouring countries and large stretches of land recently occupied by Israel.

Crimes Committed by Military Rule

As a measure for exerting more and more pressure on the Arab inhabitants, and in order to facilitate the realization of Zionist goals, Military rule in Israel has resorted to means that exceed the bounds of imagination and run counter to modern humane concepts and to the obligations of occupation authorities towards the citizens of the occupied lands and their property.

(41) Law of Land Acquisition for the Public Good, 1943.

(42) Regulation Concerning Expropriation for Public Utility — *Official Israeli Gazette,* April 8, 1968.

We have already mentioned the tragedy of the Village of **Aqrat** which was «blown up» by the Israeli Army almost a month and a half before the Supreme Court could consider the case raised by the inhabitants of the village against the order of expulsion. Another example is to be found in the village of Kfar bar'am, where Israeli land and airforces sought revenge for the ruling of the Supreme Court calling its inhabitants to return (1953) by bombarding the village and pulling its houses down to the ground.

The demolishing of these two villages stands out as a striking symbol for the tragedies of numerous Arab villages, estimated at 250[43]. Nothing remained of these villages but ruins. Israeli authorities have been trying to remove all traces of evidence for the acts committed to destroy the hopes of the inhabitants for a return to those areas.

John Ridaway, vice-deputy General of the UNRWA, has cited samples of deliberate blowing-up episodes currently practised in various Arab areas, at a press conference held in London, July 20, 1967. He said that 16 thousand inhabitants of Arab villages situated near the borders have been rendered homeless by Israeli acts of reprisal. Half the houses in Qalqilya have been deliberately blown up. He received news as well to the effect that three villages in the Laturn area have been dynamited[44].

(43) See Sabri Jiryis — *The Arabs in Israel,* vol. I, p. 118.

(44) See *Palestine Chronology,* vol. 6, p. 66.

In addition to demolishing entire villages, the Military Governor uses the provisions of article 119 in the Defence Regulations of 1945 as an excuse for destroying a number of houses in every village where an Israeli soldier or patrol is attacked, without making sure about the identity of the attacker or the house that was fired from. Such incidents have occured repeatedly after the aggression of June 1967, and their scope has been extended to include those houses whose owners are either accused of giving shelter to «Infiltrees» and possessing arms, or suspected of committing acts of sabotage(45). This measure of blasting houses is not resorted to as a penalty — since it is not directed against the incriminated person in particular — but rather as a means for retaliation that usually harms innocent civilians.

Blasting operations have caused a division in public opinion inside Israel. The Israeli Mayor of Jerusalem raised objections to what the Army was doing and refused to accept the argument of «military necessity». However, the basic motivation behind the Mayor's protest was that one of the blasted

(45) *Ibid.* Especially what was reported in the *Jerusalem Post* (August 7, 1967) that authorities of occupation have blown up a house in the village of Gbaatiyya (Jenin district) upon finding the telephone wire cut in a nearby place!

houses (the occupant of the house was under suspicion of being an accomplice in the killing of an Israeli farm watchman) was being used to lodge students after the custodian of Absentee's Property had laid hands upon it under the pretext that the owner was absent.

Israeli authorities did not content themselves only with the destruction of property, but have murdered Arab souls in cold blood according to carefully premeditated schemes containing all the details, the acquittal of the criminals and the covering of their deeds. What leaps to the mind immediately is the **massacre of Kafr Qasim** committed on the eve of the attack against Egypt on October 29, 1956[46].

Laying great emphasis on the massacre of Kafr Qasim does not mean ignoring other similar plights suffered by the Arabs at the hands of Israelis. Perhaps it is even less reputed thanotherdeeds,such as the Deir Yassin Progrom, for instance. But it has also occurred in times of stability, in addition to the Napalm and Genocide crimes committed during the three Arab-Israeli Wars.

After the June War of 1967, Israel resumed its

(46) For a full and detailed account of that Massacre and the subsequent legal measures, see — *The Arabs in Israel,* vol. II, *op. cit.*

schemes aiming at killing civilians and terrorizing them, so as «to push them back» and force them to evacuate neighbouring territories to be occupied under proper circumstances. Most important among these «Experiments in Extermination» are the bombardments and air raids against civilian residential areas in Suez, Al-Karameh, Irbid and As-Salt, where the victims of these raids amounted to more than 200 civilians. In addition to all this, blasting operations and arbitrary arrests are being committed daily in considerable numbers, a fact that has aroused deep concern outside the occupied territories and outside the Arab world[47].

The Altitude of International Law to the Policy of Expulsion and Extermination

It is self-evident that the aforementioned acts run entirely contrary to the simplest humane principles and to the rules of international ethics which demand the preservation of human life and the security of property. These obligations are also dictated by International Conventions and Customs, calling the belligerent forces of occupation to respect the laws in force in the country under their occupation:

(47) Articles published by the Swedish (Jewish) writer Bokortzin in the *Avton Bladt,* depicting his impressions in occupied Palestine, aroused world wide concern about blasting operations and torture.

«Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected»[48].

The aforementioned crimes and offences are flagrant violations of laid-down provisions as adopted by the family of nations and considered an integral part of the laws it complies with and follows.

Confiscation of private as well as public property is forbidden under the Hague and Geneva Conventions; also under the Charter of the International Military Tribunal, which has considered confiscation acts as conventional war crimes, i.e., act constituting a crime under international law[49]. Acts of Seizure have a special significance, since they are connected to a chain of offences and violations complementing them, so as to converge in one scheme directed towards certain goal. Confiscation and Seizure lead to Expropriation and the transfer of property to Israeli authorities or Kibbutzes. That in turn constitutes a violation of the duty to respect private property. The International Military Tribunal has considered the «Farben» Institution responsible and criminally liable, since it sought to obtain control of the funds seized by German authorities with the deliberate

(48) Oppenheim — *The Function of Law in the International Community*, vol. I, p. 437.

(49) *Judgements of the International Military Tribunal* vol. 22. p. 497.

intention of turning those funds into its own property[50].

Confiscation of Arab property deprives the Arab owner of the right to exploit his lands and drives him to unemployment and poverty, thus threatening his future and jeopardizing the prospects of his life. It constitutes a tremendous means of economic pressure exercised by the occupier in order to subjugate or intimidate the indigenous inhabitants of the country under occupation. That also amounts to another offence against individual liberty, human dignity and the rights of man in the occupied territories. As for the seizure of public property, it violates the Hague Regulations Respecting the Laws and Customs of War which regard the occupying state only as «administrator and usufructuary» of public property «belonging to the hostile state and situated in the occupied country»[51].

The second crime related to seizure of property is forced deportation en masse, that is, expelling Arab inhabitants from their homes and villages by force and prohibiting their return, thus paving the way for confiscating their property on grounds derived from the stipulations of Absentees' property law or under the pretext of leaving the abandoned

(50) *Trials of War Criminals* in Nuremberg, vol. 8, p. 114.

(51) Farben Trial, *Ibid.*

land uncultivated, or by resort to other prefabricated, invalid legal justification.

A crime of forced deportation is committed when occupation authorities transfer by force a person or a group of civilians from their places of residence, irrespective of the place they have been transported to or the motive behind such a measure[52]. But the motive behind deporting Arabs from their villages should be of great serious concern to us, because in reality it amounts to providing military authorities in Israel with the opportunity for committing another offence — namely, executing its plans for settling Jews in Arab villages whose inhabitants have been expelled or deported by force. Article 49 in the Geneva Convention has prophylactically paid attention to such a means which the authorities of occupation could resort to in order to block the road of return to expelled indigenous inhabitants. Hence, deportation was explicitly prohibited.

The other practice executed by force on the part of occupation authorities was the blowing up of entire villages or certain houses, depending on the circumstances. It has become a truism that such acts of wantonness and inhumanity are no longer tolerated by the civilized world, whenever they are

(52) *Charter of the International Military Tribunal* (Nurenberg) and The *Geneva Convention.*

not justified by military necessity or when committed as deliberate and premeditated acts of will. Judgements of the International Military Tribunal in Nuremberg consider acts of the sort war crimes. Article 53 of the Geneva Convention relative to the prediction of civilian persons in time of wars stipulates that :

«Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to social or cooperative organisations, is prohibited, exept where such destruction is rendered absolutely necessary by military operations»(53).

No doubt the most horrifying crimes committed by Israel in flagrant violation of International Law have to do with killing and murdering members of the civilian population, individually or collectively. Such criminal acts speak for themselves, and there is no need for provisions of international law to establish their criminal character. Nevertheless, mention could be made of those principles of the Nuremberg Tribunal (International Military Tribunal). These principles have stipulated as «Crimes against humanity»: **Murder, extermination, enslavement,** deportation and other inhuman acts done against any

(53) The U.S. Government has raised the question pertaining to this article in its first protest against Israeli blasting up operations connected with the killing of a night watchman.

civilian population. Such crimes are even more serious than «war crimes»[54].

If we are to detach ourselves from any stand of commitment, and look at the subject from the opposite side, we should be compelled to raise the arguments at the disposal of Israel. Such arguments are resorted to or relied upon, in defence of such acts and practices and by way of proving Israel as inculpable under International Laws and conventions, as well as under local ones.

No doubt there exist certain provisions in International Law to limit the universal applicability of those principes we have been considering so far and to modify them in such a way as to negate the criminal liability of the committed act. There are also some arguments calling for a partial application of international conventions with respect to the cases presented thus far. What are the main points in the arguments of the defence, and how can they be countered ?

C. The Israeli Viewpoint

1. Military Necessity.

Going back to the Hague and Geneva conventions, we find that destruction of human life and property is strictly forbidden, unless it is «justified by military

(54) See *International Military Tribunal,* vol. XXII.

necessity». Article 49 in the Geneva Convention of 1949 prohibits the transfer or deportation of the civilian population, but also leaves room for the possibility of evacuating civilians for the sake of guarding their safety, or if «imperative military reasons so demand».

On this basis, Israeli authorities could always maintain that acts and measures undertaken are dictated by security considerations and safety imperatives. Israel could claim being under constant threat of attack from the neighboring states, an attack destined to eradicate its existence.

A counter argument to this line of defence would be : Military necessity cannot be established beyond doubt, as maintaining in any of the previously mentioned crimes and violations, nor in most cases reported every day from the occupied territories. Military necessity may arise during war operations, where taking certain measures against some civilians or in specific areas becomes a question of absolute necessity that could not be avoided without doing harm to the forces of occupation or jeopardizing its war plans and schemes. But when war operations have ended, and stability is maintained, it is not possible to seek pretext under «military necessity» and justify some acts of international crime, unless there do exist serious and constant dangers threatening the military presence of armed forces — such as a case of armed mass-insurgence.

It is established beyond doubt that no case of this kind ever occurred in the occupied territories at any time subsequent to the establishment of Israel. The great majority of Arab stands of refusal did not go beyond strikes and peaceful demonstrations, which the Israeli police could easily handle. There were no consequences arising from them to justify the necessity for destruction of villages or mass transfer of population. .

We have already seen that the main objective behind such illegal acts and offences was to evacuate the Arabs from their lands only to settle Jews instead. Such a measure could hardly be included under the definition of «Military necessity», although Israel seems to consider it a decisive factor in crushing any sign of would-be Arab resistance.

Even if we are to consider the aim of such operations and acts as being the destruction of organizations for armed resistance, we should emphasize the fact that occupation authorities have no right to conduct collective resprisals against persons chosen at will, or to retaliate by destroying entire villages. Such acts are prohibited in all international conventions.

What remains to be said in that context has to do with the Charter and Judgement of the International Military Tribunal, annexed to the Conventional International Law and modifying its provisions.

According to their recognized principles, **pillage and plunder** of occupied territory, ill-treatment of civilians, organized **mass killings, wanton destruction** of cities, towns, or villages, or **devastation** are to be considered war crimes «not justified by military necessity». As **crimes against humanity,** the following acts have been underlined as having no justification whatsoever by military necessity :

«Murder, extermination, deportation and other inhuman acts done against any civilian population, or persecutions on political racial or religious grounds...»

Hence, it has become the established opinion that military necessity does not justify acts of offence under International Law, even though it may be considered, pending upon the situation, an extenuating circumstance for the individual offender(55).

2. Internal Character of Committed Crimes

The second line of Israeli defence insists upon the argument that what we have so far considered to be crimes under international law, are merely **internal measures** irrelevant to that law and its provisions. In support of this stand, Israel could point out that most of these acts — evacuation of civilian population and restriction of freedom — have been executed in accordance with proper Israeli laws.

(55) Woetzel, *op. cit.*, p. 188.

Furthermore, the international conventions called in to support the Arab standpoint, are agreements regulating war operations, whereas the present state of cease-fire has suspended military operations between the belligerent parties.

Let us take the last point of argument first. To begin with, a state of war still maintains between the Arabs and Israel, at least from a legal point of view, since cease-fire agreements have no legal consequences beyond the cessation of hostilities and war operations. In the second place, crimes against humanity — certainly much more serious than war crimes — have not been defined as those acts and offences commited only in times of war(56). It could also be added, thirdly, that what is considered a crime during the execution of military operations, with all the inhumanity, wantonness and transgression that accompanies such crimes, cannot be accepted as an «ordinary act» when conditions are stable and the principle of the rule of law holds — at least on the theoretical level.

To maintain that such measures are legally sanctioned by the internal laws and regulations currently in force in the state of Israel, is a position rejected by International Law. The international family of nations has reached a stage where it came to consider itself a family of civilized nations. Therefore,

(56) *Ibid.*, p. 180.

it forbids any authority to commit acts of crime against the residents in its territory, even though such crimes be given the appearance of legality. For instance, the Allies after World War II considered most Nazi Laws legislated in Hitlerite Germany — especially those laws pertaining to Jews and minorities, and the penal laws directed against the wife and children of deserting officers — as illegal, because they found it contrary to the basic principles upon which states and societies are founded, and because such laws constituted a violation of human rights, dignity and life. The family of nations has also rejected laws of racial discrimination (Apartheid) in Rhodesia, South Africa and South West Africa for the same reasons. The principle has been officially sanctioned in the resolution passed by the U.N. General Assembly, and became effective since December 12, 1950. According to the second principle of this resolution, committing an offence under International Law does not exempt from international responsibility for the mere reason that such an act is not punishable under local laws.

So much for acts committed in accordance with Israeli legal provisions. What about those acts of blowing up houses and collective killings contrary to Israeli laws and regulations ? It is assumed that offenders will be brought before competent courts to be tried and punished as ordinary criminals (if they happened to commit their acts inside Israeli

territory) or as **War Criminals** (if the crime was committed in the recently occupied territories). Of course, this does not affect the international character of their crimes. But judging from previous cases of a similar nature, we are entitled to assume that such Trials hardly exceed the limits of dramatic performances, well-directed on the stage of Israeli courts. In other words, it is doubtful whether Israeli courts constitute a guarantee, a primary one, for enforcing the law in the proper manner, or for providing a minimum of legal protection to Arab people in Israel.

The following question must be raised : «What is the attitude of Israeli Courts to local regulations and laws contrary to the basic law in Israel and to Universal human rights ?

The answer could be one of two things: **Either** Israeli courts adopted the principles of positivist philosophy, thereby implementing legal provisions irrespective of their **content** and as long as a provision fulfils the **formal** requirements pertaining to date of issue and publication. **Or,** they would have to resort to the Theory of Natural Law, defended by many courts and thinkers in the world(57)

(57) Modern Theories of Natural Law appeared in reaction to positivist theories that were ill-enforced in such a way as to justify arbitrary measures emanating from Dictatorial authorities in many countries.

Both theories lead to one result, to our mind. In the first case, the positivist discussion leads to positing a hierarchy of laws with respect to force and implementation. Hence, the «Declaration of the Establishment of the State of Israel»[58] is the basic law of Israel, that is to say, the strongest law, calling for implementation in case its principles run contrary to the provisions of local laws and regulations. It should also be borne in mind, that Israel's constitution has not been issued yet, although scheduled by the Declaration for the year 1948!

The Declaration pledged, for instance, that the State of Israel «will be based on freedom, justice and peace as envisaged by the prophets of Israel», and that «it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex», and also that «it will guarantee freedom of religion, conscience, language,

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The modern concept of natural law differs from the traditional one by rejecting inflexibility and permanence of principles. It asserts the changing content of atural law according to social and historical circumstances, provided it remains based on the idea of correct or just law.

See Carl Friedrich — *The Philosophy of Law in Historical Perspective*, 2nd Ed. Chapter XIX (Phoenix Books, 1963).

(58) For full text of Proclamation, see J. Badi. *Fundamental Laws of the State of Israel,* (New York, 1961), pp. 8-11.

education and culture... and it will be faithful to principles of the Charter of the United Nation»[59].

It is here that the basic contradiction becomes apparent between Israeli laws previously discussed and the Basic Law. If we hold to the positivist theory, we are bound to declare those laws for null and void as they contradict the Basic Law.

More than that(Law Courts supervise the manner of implementing formally valid laws when passing jugement on cases raised against state authorithy. This supervision is necessary, lest constitutional liberties become hypothetical liberties without any trace in reality. Viewed from this angle, Israeli courts should accord protection to the freedom of Arab citizens, whenever they come to detect or notice that arbitrary laws have only been laid down to apply to the Arabs, even if the provisions fail to mention this explicitly.

On the other hand, if Israeli Courts are to adopt the theory of natural law and admit the existence of a Sublime Law above human legislation, natural and inalienable[60], they would be inevitably obliged to say that Israeli Laws, restricting freedom and expropriating arbitrarily and unjustly, are null and

(59) *Ibid.*, pp. 9-10.

(60) See preamble — *American Declaration of Independence.*

void. Hence, these laws should not be enforced by the courts, because they contradict the simplest rights and guarantees in society.

As a matter of fact, however, sufficient information on the orientation and trends of Israeli courts is not available to us, in order to know their true stand on this problem.Nevertheless, one could deduce some principles and practices from rulings in cases discussed previously. Judging from rulings pronounced by the Supreme Court, it seems that Israeli Courts are intent upon enforcing Regulations pertaining to evacuation of inhabitants from their villages, and do approve dicisions of Military Governors, and their arbitrary measures, as long as both decisions and measures fall within the powers of the Military Governor. The Supreme Court has laid down narrow limitations for itself by maintaining that a Military Governor is not subject to questioning on the causes that led him to take a certain measure, as long as he claims that the causes and motives pertain to security considerations and necessities(61).

On the practical level, the stand of Israeli courts amounts to a fragmentation of positivist thought and a defamation of its principle. Insistence on the literal and verbal meaning of a legigslative text, without allowing for the principle of hierarchy of

(61) See Rulings No. 7, 10 and 41 — Israeli Supreme Court of Justice, *op. cit.*, p. 20.

laws, leads to a result contrary to that pursued by courts usually, and lends the constitution void of content. When such a situation exists, it means that Courts have deprived the citizen of all constitutional and judicial guarantees, leaving him at the mercy of absolute military control.

III. The United Nations: Attitude and Effectiveness

The United Nations Organization, by the nature of its structure and composition, does not warrant any optimism with respect to a just solution of the Palestine problem and other occupied Arab territories, to say nothing of a less ambitious solution touching upon the conditions of Arab inhabitants in the occupied lands and Arab refugees to neighbouring countries. The following details may contribute to a better understanding of such a pessimist outlook and prognosis:

(1) The International Organization is composed of Big Powers with tremendous influence, of small states revolving in the orbits of the powers, and of some small states trying to break through the orbit of spheres of influence.

(2) The Big Powers have at their disposal basic means for exerting pressure in the form of economic, political or moral coercion. A small state can hardly avoid all these pressures together without

exposing its international interests to threat and danger.

(3) The United States of America, by virtue of its tremendous economic role on an international level and inside the United Nations[62], has been able to exercise strong control — if not complete — on the voting trends inside the world organization. It is an established fact that, if the U.S. were to cut its contribution to the financial maintenance and expenditure of the organization, such a step would undoubtedly mean immediate bankruptcy — unless other powers were willing to fill the gap. It is also a fact that cutting American aid to under-developed countries would throw considerable numbers of them into the grips of severe economic crisis, thus forcing them to yield and succumb to pressure. As for Soviet effective influence, it does not exceed the limits of the Socialist Bloc, and outside that Block, it turns into mere moral pressure, failing to obtain the required results.

(4) The Big Powers are tied to each other by pacts and agreements that guarantee them a military influence in a number of small states. Such an influence is being exploited to reach the desired results in various fields.

(62) The U.S. contributes about 40% of the expenditure, whereas the USSR has paid its share of 14% up to the Congo Crisis, when it was discontinued.

The effects of international pressure were clearly manifest in the voting of the General Assembly on the Partition Resolution of 1947, in hindering the adoption of a resolution condemning Israel's aggression explicitly (1967), and in jeopardizing the implementation of most resolutions that failed to please Israel. .

Turning to the history of this world organization one is bound to find out that **Politics** had been the sole imperative and determinant of the attitudes chosen by the United Nations towards the Arab Crisis. Where politics plays such a prominent and decisive role, Zionist influence reigns high and gains the upper hand, through its long experience in the art of handling international politics and by having the most important means for exerting pressure at its disposal, namely — **money** and **propaganda.** The U.N. has gone so far under this Zionist influence as to pass illegal resolutions, exactly in the same manner treaded by its predecessor — The League of Nations.

Amidst the present state of affairs, there arises one important truth pertaining to the subject of disagreement between the Big Powers on the Arab-Israeli Conflict. It could be limited to the following two things:

First — Some of these powers support the Arab World politically and economically, whereas others

support Israel. Each group of supporters has his own motives and ambitions.

Second — There is a disagreement on the legitimacy of Israeli attacks against the Arab states, especially on the June 1967 aggression, and on how «to remove the traces of agggression.»

But no one state in the world supports the Arab standpoint which calls for the removal of Israel or the re-establishment of a Palestinian political presence and entity — this applies also to those states that lend great support to the Arabs, the Soviet Union and India included.

Starting from this point of truth, and bearing in mind that the U.N. needs «bargaining and compromising» as a result of big blocs' struggles inside it, one could perhaps understand the Resolution of the Security Council dated Nov 22, 1967. Political contradictions leave their traces on the contradictions contained in that resolution. They manifest themselves in the recognition of Israel's tremendous gains of conquest, and in the absence of a chronological order in its paragraphs — as these require corresponding exigencies and entailments.

Failure in Implementation

The United Nations Organization has failed to implement many a resolution passed by the General

Assembly or the Security Council, but has implied certain obligations to Israel's dissatisfaction. Except for the Resolution urging Franco-British and Israeli-Forces to withdraw from the territory occupied in 1956 (a Resolution supported by the U.S. also), it is hard to find one pro-Arab resolution that was implemented. To give only a few examples: partition and trusteeship resolutions before the 1948 war, the Resolution calling for the return of the Arab Refugees to their homes, Resolutions requiring Israel to abide by the stipulations of the Geneva Convention in the treatment of Arab prisoners of war, Resolutions against Israel's annexation of Arab Jerusalem and others urging withdrawal, and lastly, the Security Council's resolution recommending an investigation of Arab conditions inside the occupied territories, which was explicitly rejected by Israel.

The United Nations Organization has found it appropriate to sacrifice tens of thousands of soldiers and cause misery among hundreds of thousands of human beings in Korea and the Congo, under the pretext of protecting the independence and integrity of these states and for guaranteeing the right of their peoples of self determination. Verbal denunciation was the only measure taken against Israel, although the same organization has acknowledged the illegal character of many Israeli measures and acts — such as the occupation of Um Arrashrash, the launching of the 1956 war of aggression and the

annexations of Arab Jerusalem. It is established beyond doubt that Israel has violated a great number of international resolutions, by refusing to comply with them, either explicitly or implicitly. In spite of the fact that Israel constituted a flagrant violation of the principle of peoples' right to self-determination, the International Organization did not deem it necessary or appropriate to dispatch an internal force to enforce the decisions taken by the Security Council[63], nor did it apply economic sanctions[64], or suspend its membership and expel it from the organization[65].

The file of Israeli measures and acts reveals a long list of war crimes and international offences, under international law and against a racial and reli-

(63) Article 42 of the U.N. Charter: Security Council «may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security». Consult Giraud's *L'interdiction du recours à la force, op. cit.,* for a full analysis.

(64) Article 41 of the *Charter.*

(65) Article 5: «A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privilages of membership by the General Assembly upon the recommendation of the Security Council to expell from the Organization a Member-State which has «presistently violated the principles contained in the present Charter».

gious minority. These acts of crime lay the burden of responsibility on member-states in the International Organization, and call for an actual intervention to rescue a persecuted minority(66). But world politics forbids such an intervention.

Summing up, it could be said: The United Nations is an organization whose public opinion is predominated by a general trend running contrary to Arab interest. At most, understanding tendencies are only partially accepted, but the basic parts rejected. If it happens that one resolution is passed in support of some Arab standpoint, the organization fails to enforce it.

In the face of such a complete failure on the part of the United Nations to spell out the truth and administer justice, the **Arabs** stand to challenge destiny. The choice is clear: **Either** to obtain their rights single-handed, **or** to go down and disappear in the annals of history.

IV. Rights of the Conquered

Armed Resistance becomes inevitable by virtue of such justifying causes as Israeli occupation of Arab territories and the resulting consequences of racial discrimination, war crimes, attempts to oblite-

(66) See *Droits des minorités,* J. Int. Dr. Dub., 1963. Opp's Int. L., vol. I, p. 308.

rate the identity of the vanquished people, and by the failure of just political solutions, U.N. attempts at a solution included. .

These causes are countered by **rights** reserved for the vanquished people, rights derived from the nature of things and from natural rights which mean: to be or not to be. Since these rights pertain to human nature, they have imposed themselves on International Law, and came to constitute a collection of principles, agreed upon and applicable under the rule of law and in those domains far-removed from international politics and interests. Such rights are divided in their broad outlines to the following.

(1) Rejection of aggression and its results;

(2) Self-Defence and Preservation of beeing and identity.

1. Rejection of Aggression Results

The Israeli side finds it extremely difficult to produce legal arguments to support its standpoint with strength and clarity. This has been established at various international occasions, where Israel sought to divert discussion towards the gravitating position of imposing a «fait accompli» and facing the world with a «de facto» situation whose existence cannot be denied. During the debates of the Security Council prior to the June aggression of

1967, the predominant Israeli slogan supported by other states was «Israel is there to stay — Let this be the starting-point for any further discussion» After the aggression, the Israeli line of argumentation turned out to be: «Israel has new frontiers that should be accepted before any further discussion of other subjects.»

The general principles of law refuse to accept a condition based on illigitimate acts, and the rule of universal application states: «What is built on imperfection, is imperfect.» This rule has justifications on both the national and international levels — namely, one committing an act of crime or offence cannot retain any gains resulting from the committed act and still go unpunished. Also: No circumstances should be created as to justify resorting, on the part of the offended, to commit a crime for the purpose of regaining his rights single-handedly.

An act of aggression remains illegal in international relations even if supported by third party states, because the latter have no capacity to intervene and straighten out irregular situations and legalize them(67). If other states recognize the new state that arose out of an aggressive act contrary to International Law, such recognition can only have political consequences which govern the relation-

(67) Kelsen — *Principles of International Law* (1952), pp. 293-295.

ships between the recognizing states and the aggressor state. It has no effect that cancels the illegal act, nor does it affect any change in the relations between the Aggressor and the victim of aggression[68].

As a matter of fact, International Law in its present condition — where it is still predominated by vestiges of conventional international politics — does not explicitly provide for a decisive and collective act of non-recognition with respect to acquisition of territory by force. Such is the case in International Conventions, the U.N. Charter included. However, this omission does not negate the fact that this kind of aggression runs contrary to the obligations undertook by member-states of the United Nations «for the suppression of acts of aggression» (Article 1 paragraph 1 of the Charter), to «settle their international disputes by peaceful means» (Article 2, paragraph 3), and «shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state» (Article 2, paragraph 4). «The Acquisition of territory, as a result of an act of aggression legally unjustifiable, constitutes a breach of these obligations»[69]. Hence, it becomes

(68) *Ibid.*

(69) Thomas & Thomas (Jr.) — *Non-Intervention* (1956), p. 270.

the imperative duty of member states in the United Nations to refuse such acquisition by aggression[70] and to work towards its removal for the sake of maintaining international peace and protecting the rights of people.

Various states have incorporated this principle, on the level of practical application, into their foreign policy, thereby drawing conclusions which in turn governed their relations with other states. One such instance could be found in the letter of President F.O. Roosevelt to the Prime Minister of France, Paul Reynaud (15 June, 1940) to this effect: «In accordance with its policy not to recognize the results of occupying any territory acquired by military aggression, the Government of the United States does not consider as legal any attempts of aggression by force against the independence of France and its territorial integrity»[71].

The United Nations has also applied this same principle a number of times, mostly to the Arab-Israeli Conflict. Mention should be made here of U.N. Resolutions with respect to the 1956 aggres-

(70) *ILC Draft Declaration on Rights and Duties of States,* 1949.

(71) For original, see: MS Dep't of State, file 740,0011 European War 1939/3790. The U.S. Government has taken similar stands with respect to the occupation of Albania (December 10, 1942) and that of Poland (October 7, 1939).

sion. Even the Resolution of the Security Council (22.11.1967), unanimously passed after endless maneuverings and evasions, did assert in the introduction the principle of «prohibiting acquisition of territory by means of war» (and conquest). Nevertheless, that same resolution was to give Israel what it has always been dreaming of. In itself, the Resolution constitutes a violation of the principle of non-recognition for the resulting aggression, thereby providing Israel with ample room to evade implementation and retain what has been occupied by the force of arms.

2. Right to Self-Defence

Rejecting the new state of affairs, after Israel's aggression and the U.N. failure to implement its decisions and resolutions, becomes the logical prerequisite for embarking upon the next positive step: working towards liberation in accordance with the principle of self-defence.

In its traditional lmilitary conception, self-defence takes the form of regular war. But limiting action to such a frame work does not constitute an obligation. There are exceptions calling for other forms of resistance.

International Conventions and Customs have lent support to every people's right to work towards

liberating its occupied territories. The Geneva Convention of 1949 recognizes popular resistance and grants members of organized resistance movements the rights and privileges of regular army fighters within certain conditions that they have to observe — (Article 4). Trials of War Criminals in Nuremberg have sanctioned this principle by passing judgements to sentence German officers and fighters who did not treat members of resistance movements as prisoners of war. They also considered the activities of Resistance members as «war operations», since the characteristics of modern war no longer permit the limitation of such activities to regular armies sustained by governments(72).

Numerous States all over the world have declared their support to European men of resistance, as these carried arms against the forces of occupation,

(72) See the following decisions:

(a) Van Hoeve de Feyter vs. Fire Insurance Co., Belgian District Court of Dordrecht — (*Annual Digest*, 1947).

(b) Smulders & Poccinati vs. Société Anonyme «La Royale Belge», the Civil Court of Liège, (*Annual Digest*, 1943-1945), case No. 102.

(c) Peeterbrock v. Assurances générales des Paris Pasicrisie Belge 1947, III, p. 15.

(d) Cie d'Assurances La Nationale vs. Vve Cabanel, Court of Appeal of Monpellier (*Annual Digest*, 1946).

and when their governments fell to the Nazi Invasion beginning with the end of the 1930's[73].

As a matter of fact, there is no reason whatsoever to justify limiting the right to defend oneself to a single means, that of regular war. Article 51 of the U.N. Charter provided for the following:

«Nothing in the present Charter shall impair the **inherent right** of individual or collective self-defense if an armed attack occurs against a Member of the United Nations...»

If peoples have the right to revolt against their native or foreign rulers and to liberate the fatherland — a right sanctioned in all legal philosophies — they should also have the same right to revolt against forces of foreign occupation.

There is nothing to challenge the right to armed resistance as being illegal or to withhold recognition from it. The present resistance in occupied Arab territories fully agrees, with respect to its justifications, with internationally recognized customs and conventions. Hence, it is vindicated and legally sanc-

(73) See J. de Dr. Int. Pub., 1945. Britain and the U.S. recognized French Resistance on 27 August, 1943. The Soviet Union recognized it too, by a declaration transmitted from Ratio Moscow (26 August, 1943).

tioned. What has been recognized and granted to other peoples as their right to self-defense, should also apply to the Arab Resistance movement fighting against foreign occupation of Arab territory and determined to liberate the Arab homeland. The right to self-defense, individually as well as collectively, is an **inherent right** that should not be, and cannot be, impaired or violated.

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